

# VISA WAIVER PROGRAM AND THE SCREENING OF POTENTIAL TERRORISTS

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON  
INTERNATIONAL TERRORISM, NONPROLIFERATION  
AND HUMAN RIGHTS  
OF THE  
COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTH CONGRESS

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# VISA WAIVER PROGRAM AND THE SCREENING OF POTENTIAL TERRORISTS

WEDNESDAY, JUNE 16, 2004

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL TERRORISM,  
NONPROLIFERATION AND HUMAN RIGHTS,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Committee met, pursuant to call, at 10:05 a.m. in Room 2172, Rayburn House Office Building, Hon. Elton Gallegly presiding.

Mr. GALLEGLY. The Subcommittee on International Terrorism, Nonproliferation, and Human Rights is holding a hearing on a Visa Waiver Program, and the implementation of that program on United States national security and counter-terrorism efforts.

I would like to begin by saying that everyone here recognizes the importance of the visa waiver program to our Nation's travel and tourism industry, and to the American economy.

Last year, over 13 million people came to our country as a result of this program. This represents almost 50 percent of all temporary visas in the United States. Clearly the visa waiver program is a vital part of the half-trillion dollar U.S. travel industry.

However, I also believe that Congress and the Administration should look closely at the visa waiver program to ensure that it is being operated in a manner that does not compromise the national security of our country. It is my view that the Department of Homeland Security, the Department of State, and our intelligence agencies should conduct a top-down review of the program to determine if any reforms are needed to improve our ability to prevent terrorism, or terrorists from entering the United States.

As we learned in a previous hearing that we held at the Los Angeles International Airport, immigration and border patrol is integral to the success of our government's counter-terrorism effort.

I am pleased that the State Department and the Homeland Security Department have already begun to strengthen the visa features of the program. Beginning on September 30, 2004, all visa waiver travelers will be subject to the US-VISIT Program at our air and seaports of entry.

US-VISIT will enable the Department of Homeland Security to check visa waiver travelers against additional lookout databases and ensure that the traveler is the same person identified on the passport.

Further, pursuant to the Enhanced Border Security and Visa Reform Act of 2002, all visa waiver countries are required to issue

their citizen machine-readable, tamper-resistant passports that incorporate biometric identifiers no later than October 26 of 2004.

Yesterday, the House passed a bill granting a 1-year extension. I recognize the technical difficulties involved in developing and producing passports that are compliant with International Civil Aviation Organization standards, and have biometric features.

However, I urge the Departments of State and Homeland Security to continue to pressure visa waiver countries to begin in issuing machine-readable, biometrically-based passports at the earliest possible date.

In addition to these two improvements in the visa waiver program, I will be asking our witnesses their views regarding other specific reforms that can enhance program security and counter-terrorism features.

It is my view that making the visa waiver program more secure is critical to preventing a terrorist from slipping through our borders, and preventing terrorist entry is the best way to ensure that the program will enjoy the support necessary to ensure its continuation.

At this point, I would recognize my colleague and friend from California, the Ranking Member of the Subcommittee, Brad Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman, and thank you for holding these hearings into the efforts to ensure the security of the visa waiver program. This program allows nearly 15 million people to come here from 27 different countries and to spend their money as tourists and visitors.

They would be required to obtain a visa from a U.S. Consulate if Congress did not take the action that we began just a few days ago, and issue or allow a delay of this program.

Let me first state that the main advantage of the program from the point of view of security and resource allocation. There is a select group of countries that sends millions of their citizens to the United States every year on tourism as I mentioned and for business.

These countries have similar living standards as the United States, and so there is little reason to fear illegal immigration. These countries and their people share longstanding friendships with our country.

The governments of these countries are our friends, or at least not considered hostile. It makes sense to focus our limited resources on screening visa applicants from other countries where the risks, especially those of economically-driven illegal immigration are higher.

However, we must take reasonable measures within the visa waiver program to assure our security, to ensure the ease of travel to the U.S. for citizens from these ally states is not utilized by terrorist organizations seeking to attack the United States.

In return for foregoing the requirement of a visa to visit the U.S., these countries must improve the security features of their passport. Congress, in different enactments, passed after September 11th mandated deadlines for participant countries.

These are that the passport or participant countries be machine readable, that they be tamper resistant, and that they include bio-

metric technology. It is clear that not one of the participating countries will be able to meet the requirement that they begin issuing biometric passports in October, and an extension is probably in order, and that is how the House found a few days ago.

We must be careful not to do this with any kind of wink or nod that implies that further waivers and further extensions will be in order. Our friends need to know that we need them to move forward with all deliberate speed.

In this vain, it is important to note that our own State Department will not itself be issuing biometric passports on October 26, 2004. We are therefore asking our friends to do something that we are not in a position to do ourselves.

The visa waiver program is a reciprocal arrangement and will therefore be necessary to extend the deadline not only to accommodate others, but to accommodate ourselves. On Monday, the House passed as I mentioned H.R. 4417.

This bill would among other things extend the biometric deadline for 1 year. While it remains unclear as to the final length of the extension, 1 year, with the Administration preferring 2 years, there will in all likelihood be no suspension of the visa waiver program on October 27 given the likely action of the other body.

There are real security challenges presented by the visa waiver program. These need to be addressed. I look forward to these hearings as we address them. Given the importance of this to our national security, it is remarkable that we ourselves are not issuing biometric passports already.

That we therefore lack very much credibility in insisting that others move forward, and that we have neither convinced ourselves nor our closest allies that the security of the American people is worthy of immediate implementation of these technological improvements.

I would hope that the Administration would be able to report to us how we are going to do it ourselves very quickly, and how we are going to have before us pledges from all these visa waiver countries that they will be on board within a year.

This represents a dual-headed State Department failure; failure to do it ourselves, and failure to get others to do it, and failure to get others to seriously commit to doing it in any ascertainable time in the future.

A failure of the Administration, a failure of diplomacy, and we are waiting for the next attack. I yield back.

Mr. GALLEGLY. If there are any other Members that would like an opening statement, we will be happy to place it in the record, and we will move on with our first panel.

Ms. BERKLEY. Mr. Chairman, I had planned to give one.

Mr. GALLEGLY. Well, you certainly can, and we will make it a part of the record of the hearing.

Mr. SHERMAN. Would the Chairman allow a Member to make a brief opening statement?

Mr. GALLEGLY. Okay. I will yield to the lady for a minute for an opening statement.

Ms. BERKLEY. A minute. Okay. So, good morning, and thank you, Mr. Chairman, and I would like to thank the Ranking Member for convening this hearing to explore the visa waiver program.

I also want to thank the witnesses for being here to give us their thoughts and perspectives. I am a strong supporter of the visa waiver program. However, that support comes with certain concerns.

The visa waiver program as we know allows nationals from certain countries to enter the United States as temporary visitors without first obtaining a visa.

This helps promote tourism and encourages international visitation to the United States, and allows the Federal Government to focus its limited resources on more intensely screening prospective visitors from high risk nations.

I represent Las Vegas, Nevada. The travel and tourism industry is the economic engine of the Las Vegas valley. Tourism in my district has an economic impact annually of \$32.8 billion.

Last year, 36 million people visited Las Vegas. Foreign travel represents 10 percent of that number. If faced with paying nearly a \$100.00 fee, filling out numerous lengthy forms, waiting weeks or even months for interviews, and waiting indefinite periods for uncertain decisions, many travelers would choose other destinations.

Discontinuing the program would cost the United States economy \$28 billion in revenue over a 5-year period, as well as 500 thousand tourist-based jobs. In Las Vegas, 82 percent of our tourists are repeat visitors.

America and Nevada need these visitors to continue, and their tourist dollars to continue bolstering the U.S. economy. Having said that, and despite the obvious benefits and my support for the program, I do have a number of concerns.

As we are all aware, to date at least four known terrorists have entered the United States from the visa waiver nations. Congress originally placed a deadline of October 26 of this year for all nations who are participants in the visa waiver process to begin issuing machine readable passports.

Obviously we are not going to be able to meet that deadline, not only with the countries that participate, but the United States as well. And while I support a 1-year extension, I don't want this to become an annual burst of many annual extensions issued by Congress.

If foreign nations and the United States are unable to meet the biometric requirements, then the Department of State and Homeland Security must develop an alternative to allow these important programs to continue, while ensuring U.S. security at our borders and entry points.

Thank you again for appearing, and I am looking forward to hearing your suggestions and solutions to the issue and the problem. Thank you, Mr. Chairman.

Mr. GALLEGLY. Does the gentleman from Colorado have an opening statement?

Mr. TANCREDO. Well, Mr. Chairman, I think after hearing that, I guess what we could say to the witnesses is make sure that you do absolutely nothing to impede the flow of tourists into the country; and then secondly, make sure that absolutely no terrorist gets in. That is it. Thanks a lot.

Mr. GALLEGLY. Today, as part of our distinguished panel, our first witness is Mr. Robert Jacksta, who was appointed by the Commissioner of Customs in 2002 as the Executive Director of Border Security and Facilitation.

And in that position, Mr. Jacksta has policy oversight for the day-to-day operations at the ports of entry, including the customs trade partnership against terrorism. Mr. Jacksta joined the Customs Service at New York's John F. Kennedy Airport in 1973.

And in 1977, he became full-time employed with Customs, working in trade compliance at JFK. In October 1997, Mr. Jacksta was appointed as the Port Director of Washington, DC, located at Dulles Airport.

And in 1999, he was appointed to the position of Director of Passenger Programs, and then Executive Director of Passenger Programs in 2001. The Commissioner recognized Mr. Jacksta in 1995, awarding him the Customs Service Customer Service Award.

In December 1999, he received the Commissioner's Outstanding Performance Award. Welcome, Mr. Jacksta.

**STATEMENT OF ROBERT JACKSTA, EXECUTIVE DIRECTOR,  
BORDER SECURITY AND FACILITATION, U.S. CUSTOMS AND  
BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY**

Mr. JACKSTA. Good morning. Good morning, Chairman Gallegly, Ranking Member Sherman, and distinguished Members of the Subcommittee. It is a pleasure to appear before you today to discuss the visa waiver program and the screening of potential terrorists.

Since the creation of Customs and Border Protection in March 2003, CBP's priority mission is the detection and prevention of terrorism, and the weapons of terrorism from entering the United States.

CBP has in place a number of measures to assist in achieving this mission. Prior to the arrival of the international traveler at our locations, port of entries, CBP screens these travelers using electronic manifests provided by the carriers through the advanced passenger information system.

CBP checks the names of the passengers and crew members in the interagency border inspection system, a name-based database that includes DHS, Department of Justice, Department of State, and other Federal Agencies.

CBP's national targeting center also reviews the manifests for potential persons of interest, and those people that are highlighted by this system are put aside for additional screening or in certain cases they are basically met at the gate when the flight arrives.

CBP has also been actively involved working closely with the terrorist screening center. CBP is committed to maintaining a high professional and well trained core of officers. One of our critical goals is to ensure that each port of entry has a team of officers trained to intercept and interrogate suspected terrorists.

We are also cross-training all officers who have historically performed only customs inspections to perform immigration inspections as well. The initial phase of this unified primary training has been completed.

CBP customs officers have been trained to process U.S. citizens, and lawful permanent residents through CBP immigration primary processing. The second phase of this screening, due to begin this summer, will be to include non-immigrants primarily processing also.

This will allow us to leverage our work force and reallocate resources to address critical needs during the summer peak traveling season. Currently, non-immigrant visa holders are processed through the US-VISIT at 115 airports and 14 seaports.

Effective September 30, 2004, US-VISIT participation will be expanded to visa waiver program travelers applying at air and sea ports of entry. The US-VISIT process involves a digital inkless fingerscan of the two index fingers and a digital photograph.

The fingerscan is checked against appropriate lookout databases to check for among other things known or suspected terrorists. At the primary inspection station, CBP officers can view the Department of State photo and biographical information which were submitted at the time of the visa application of the non-immigrant visa traveler.

The CBP officer then compares the status of the individual who is applying for admission, providing additional verification of the applicant's identity, and safeguarding the identity of those travelers whose passport may have been lost or stolen.

The visa data is also used to take a closer look at the traveler who may be of interest. The Department thanks the House for its passage of H.R. 4417, a bill that would provide for a 1-year extension to the requirement for the visa waiver countries to have biometric enabled passports, and for ports to have readers capable of reading these passports.

However, DHS continues to request a 2-year extension of these deadlines. We believe that although many of the countries will be unable to meet these deadlines, they are actively working toward implementing the standards for international interoperability.

Absent legislative relief, this requirement would force many travelers to obtain a visa which may potentially cause them to choose not to visit the United States. CBP currently conducts inspections of persons applying for admission in 13 overseas locations.

In addition, CBP has developed a pilot program, the Immigration Security Initiative, to further improve our effectiveness in identifying terrorists, criminals, and other inadmissible passengers prior to the boarding. Just this month, CBP deployed three officers to the Netherlands, a visa waiver program country, for a 90 day ISI pilot program.

Not only will CBP have an opportunity to examine passengers prior to boarding, but airlines will have the opportunity to consult with the CBP officers to prevent individuals from arriving in the United States without the proper documentation, and to prevent inadmissibles from getting on the flight.

CBP has coordinated this program with the Netherlands, the Department of State, and CBP officers assigned to this program have been specifically trained to this task.

In conclusion, CBP uses advanced information to establish targets and deploy officers overseas to intercept those targets as soon

as possible. We train our officers to identify targets and give them the tools to process these cases when they arrive with efficiency.

Using the pre-clearance and pre-inspection programs, the advanced passenger information system, US-VISIT, as well other initiatives, CBP has established a layered approach to securing the United States from the entry of terrorists and terrorist implements.

Thank you for giving me the opportunity to speak to you today, and I will be happy to answer any questions that you may have.

[The prepared statement of Mr. Jacksta follows:]

PREPARED STATEMENT OF ROBERT JACKSTA, EXECUTIVE DIRECTOR, BORDER SECURITY AND FACILITATION, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

CHAIRMAN GALLEGLY, RANKING MEMBER SHERMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE. It is a pleasure to appear before you today to discuss the Visa Waiver Program and screening of potential terrorists.

Since the creation of Customs and Border Protection (CBP) in March 2003, CBP's priority mission is the detection and prevention of terrorists and the weapons of terrorism from entering the United States. CBP has in place a number of measures to assist in achieving this mission.

#### PRE-ARRIVAL MEASURES

Prior to the arrival of international travelers at air and sea ports, CBP screens these travelers using electronic manifests provided by the carriers through the Advanced Passenger Information System (APIS). CBP checks the names of passengers and crewmembers in the Interagency Border Inspection System (IBIS), a name-based database that includes DHS, Department of Justice, Department of State and other agencies' lookouts. CBP's National Targeting Center also reviews the manifests for potential items of interest and can highlight passengers for additional screening or in certain cases, highlights passengers who CBP meets planeside and escorts to the secondary inspection area for review. CBP also actively coordinates with the Terrorist Screening Center.

#### ARRIVAL MEASURES

CBP is committed to maintaining a highly professional and well-trained corps of officers. One of our critical goals is to ensure that each port of entry has a team of officers trained to intercept and interrogate suspected terrorists.

We are also cross-training all officers who have historically performed only customs inspections, to perform immigration inspections, as well. The initial phase of this unified primary training has been complete. CBP-Customs officers have been trained to process U.S. citizens and lawful permanent residents through CBP-Immigration primary inspection. The second phase of this training, due to begin this summer, will be to include non-immigrant primary processing. This will allow us to leverage our work force and reallocate resources to address critical needs during the summer's peak traveling season.

Currently, non-immigrant visa holders are processed through US-VISIT, at 115 airports and 14 seaports. Effective September 30, 2004, US-VISIT participation will be expanded to Visa Waiver Program travelers applying at air and sea ports of entries. The US-VISIT process involves a digital inkless fingerscan of the two index fingers and a digital photograph. The fingerscan is checked against appropriate look-out databases to check for, among other things, known or suspected terrorists.

At the primary inspection, CBP officers can view the Department of State photo and biographical information which was submitted at the time of visa application of the non-immigrant visa traveler. The CBP Officer then compares this data to the individual who is applying for admission, providing additional verification of the applicant's identity and safeguarding the identity of those travelers whose passport may have been lost or stolen. The visa data is also used to take a closer look at travelers who may be of interest.

#### VWP DEADLINE

The Department thanks the House for its passage of H.R. 4417, a bill that would provide for a one-year extension to the requirements for visa waiver countries to have biometric enabled passports, and for ports to have readers capable of reading these passports. However, DHS continues to request a two-year extension of these

deadlines. We believe that although many of the countries will be unable to meet these deadlines they are actively working towards implementing the standard for international interoperability. Absent legislative relief, this requirement would force many travelers to obtain a visa, which may potentially cause them to choose not to visit the United States.

#### OVERSEAS INSPECTION

CBP currently conducts inspections of persons applying for admission in 13 overseas airports. These ports include Aruba; Bermuda; Freeport and Nassau, Bahamas; Dublin and Shannon, Ireland; and Calgary, Toronto, Edmonton, Vancouver, Montreal, Winnipeg and Ottawa, Canada. CBP staff at most of these stations, other than Shannon and Dublin, complete full CBP (immigration and customs) processing. Staff at the Shannon and Dublin locations perform CBP-Immigration processing only. Flights from these two ports are cleared for CBP-Customs and Agriculture at their destination ports in the United States.

CBP has developed a pilot program, the Immigration Security Initiative (ISI), to further improve our effectiveness in identifying terrorists, criminals and other inadmissible passengers prior to boarding. Just this month, June 2004, CBP deployed three officers to the Netherlands, a Visa Waiver Program country, for a 90-day ISI pilot program. Not only will CBP have an opportunity to examine passengers prior to boarding, but airlines will have the opportunity to consult with trained CBP officers during the check-in and boarding process in order to prevent transporting passengers who are inadmissible. CBP has coordinated this program with the Netherlands and the DOS, and CBP officers assigned to this program have been specifically trained to this task.

#### CONCLUSION

We use advance information to establish targets and deploy officers overseas to intercept those targets as soon as possible. We train our officers to identify targets and give them the tools to process those cases with efficiency. Using the preclearance and preinspection programs, DOS visa data, the ISI project, APIS, targeting and analysis, CBP officer training, USVISIT, as well as other initiatives, CBP has established a layered approach to securing the United States from the entry of terrorists and terrorist implements.

Thank you for giving me the opportunity to speak before you today. I will be happy to answer any questions you may have.

Mr. GALLEGLY. Thank you very much, Mr. Jacksta. Our second witness is Ms. Catherine Barry, who is the Managing Director of the Visa Services Office within the Department of State.

Ms. Barry joined the State Department in 1977, and was assigned to the United States Embassy in Mexico. She also served in Canada and Korea until 1984, when she returned to Washington, DC to join the Cuba Desk. Then Ms. Barry spent 2 years working in the emergency center for United States citizens, supporting consular officers in Asia, Africa, and the Middle East, who were helping Americans in distress.

Ms. Barry also served as a Senior Consular Officer in the U.S. Consulate General in Israel as Director of the 24 hour watch of the State Department, Consul General at the United States Embassy in Honduras during Hurricane Mitch.

Ms. Barry attended the University of Illinois, the Fletcher School of Law and Diplomacy, and the Industrial College of the Armed Forces. Welcome, Ms. Barry.

#### **STATEMENT OF CATHERINE BARRY, MANAGING DIRECTOR, OFFICE OF VISA SERVICES, DEPARTMENT OF STATE**

Ms. BARRY. Thank you, sir. Good morning, Chairman Gallegly and Ranking Member Sherman, and other distinguished Members of the Subcommittee. Thank you for the opportunity to testify on the visa waiver program, and the Administration's request for a 2-

year extension on the October 26, 2004 deadline, for inclusion of biometric features in VWP passports, and the State Department's progress in developing our own biometric passport.

The inclusion of biometrics in international travel documents to verify the identities of prospective travelers to our country as an additional layer of security is a critical step in improving border security for America and in protecting travelers.

Developing a biometric passport is not the only step we are taking to enhance the security of our borders. We are working hand-in-hand with our colleagues in the Department of Homeland Security to improve our multilayered and interlocking system for border security, through greater information sharing among agencies and with the VWP governments, through enhanced passenger screening, and with DHS' recent decision to expand the US-VISIT program to include VWP travelers.

To illustrate our level of information sharing, issued visa data is available to CBP officers at ports of entry through data share between our consular consolidated database and the US-VISIT program.

The entire consulate consular consolidated database, with more than 70 million records, including officer notes, is available to the CBP's national targeting center to aid them in giving guidance to ports of entry.

State and DHS are currently in the middle of a congressionally mandated biennial reviews of the VWP countries, and through our Visa Viper Committees at every post, we aggressively pursue all leads related to terrorism so that every element of the Embassy in a position to do so all over the world contributes critical information to our consular and Federal lookout system.

As you know, the Enhanced Border Security and Visa Entry Reform Act, established October 26, 2004, as a deadline by which visa waiver program countries must begin issuing their nationals only biometrically enabled passports that comply with the International Civil Aviation Organization standard.

In May 2003, ICAO decided to make facial recognition encrypted on contactless chips the globally interoperable standard passport biometric. Thus, VWP countries had 17 months from that date to bring a biometric passport from design to production, a process that normally takes years.

Although the VWP country governments are committed to deploying biometric passports, they are encountering the same technical and scientific issues that we are in our own efforts to produce a sound biometric passport.

As a result, fewer VWP countries will be able to meet this legislatively mandated deadline. The challenge given the international community by this congressional mandate is a daunting one.

In May 2004, ICAO established the technical standard for the interoperability of contactless chips and passport readers at ports of entry, and the technical specifications for protecting passport data from unauthorized use.

As a result, manufacturers can now begin producing passport readers that will be able to read multiple chips and each country can begin production of its own contactless chip passport for comprehensive testing.

Although the legislative requirements in the Enhanced Border Security Act do not apply to the U.S. passport, we recognize that convincing other nations to improve their passport requires U.S. leadership.

To this end, we too will introduce contactless chips into U.S. passports. We expect to produce our first operational biometric passport this December in Washington, and we plan to begin regular production of biometric tourist passports in February 2005, and our passport agency in Los Angeles.

These passports will then be used as part of a multination interoperability test. We hope to be in full production at all 16 passport facilities by December 2005.

Given our own experiences with respect to meeting the deadline and the circumstances described, we believe that there are compelling reasons to extend the deadline to November 30th, 2006.

Rushing a solution to meet a 1-year extension virtually guarantees that at least some of the systems developed will not be interoperability, something we all need to avoid.

Failure to extend the deadline will have other serious consequences as well, since travelers from visa waiver countries with passports issued on or after October 26, 2004 without biometrics will need visas to travel to the United States.

We estimate that the demand for non-immigrant visas will jump by over 5 million applications in fiscal year 2005, a 70 percent increase in our non-immigrant visa workload.

We would not meet the increased demand without serious backlogs. We hope that you will agree that extending the deadline to make sure that all countries get it right the first time is a reasonable measure, given that it is supplemented by other security measures, such as advanced passenger screening, increased sharing of lost and stolen passport information, and the registration of visa waiver travelers on U.S. visits. Thank you very much.

[The prepared statement of Ms. Barry follows:]

PREPARED STATEMENT OF CATHERINE BARRY, MANAGING DIRECTOR, OFFICE OF VISA SERVICES, DEPARTMENT OF STATE

Thank you for the opportunity to testify today on the Administration's request for a two-year extension of the October 26, 2004 deadline for inclusion of biometric features in passports issued by countries which participate in the Visa Waiver Program (VWP). I also want to report on the Department of State's progress in developing our own biometric passport. The inclusion of biometrics in international travel documents to improve our ability to verify the identities of prospective travelers to our country, especially individuals who might present a security risk, is a critical step in improving border security for America and in protecting travelers. The entire international community will benefit from the security advantages of biometric passports as part of our collective effort to combat terrorism.

Naturally, these are not the only steps we are taking with regard to enhancing the security of our borders. We are working hand in hand with our colleagues in the Department of Homeland Security (DHS) to improve our multi-layered and interlocking system of border security through greater information sharing among agencies and with the VWP governments, through enhanced passenger screening and pre-clearance measures, and with DHS's recent decision to expand the US-VISIT Program to VWP travelers. State and DHS are currently in the middle of the congressionally mandated biennial reviews of the VWP countries, assessing their compliance with the terms of the program and the criteria established by Congress. At all visa-adjudicating posts overseas, consular officers have pushed the very borders of our nation far beyond our physical limits as a nation. And through our Visa Viper committees at every post, we aggressively pursue all leads so that every ele-

ment of the Embassy in a position to do so—all over the world—contributes critical information to our consular lookout systems.

As you know, the Enhanced Border Security and Visa Entry Reform Act (EBSA) established October 26, 2004, as a deadline by which VWP countries must begin issuing their nationals only passports that incorporate biometric identifiers that comply with the International Civil Aviation Organization (ICAO) standards. In May 2003, ICAO decided to make facial recognition encrypted on contactless chips the globally interoperable, standard passport biometric. Thus, VWP countries had 17 months from that decision date to bring a biometric passport from design to production—a process that normally takes years. The EBSA does not provide a waiver provision, and few, if any, of the 27 participating VWP countries will be able to meet this legislatively mandated deadline. Although the VWP country governments are committed to deploying biometric passports, they are encountering the same technical and scientific challenges we are in our effort to produce a sound biometric passport.

The challenge given the international community by this congressional mandate is a daunting one. We face complex technological and operational issues, including the security of the passport data on the contactless chips and the interoperability of readers and biometric passports. Working through these hard issues takes time. In May 2004, ICAO established the technical standards for the interoperability of contactless chips and passport readers at ports of entry and the technical specifications for protecting passport data from unauthorized use. As a result, manufacturers can now begin producing passport readers that will be able to read multiple chips.

Each country must now begin limited production of the contactless chip passport for testing. We do not expect to receive large shipments of 64kb chips for use in the U.S. passport until spring, 2005. Like other governments, we expect deliveries to ramp up during 2005, but we ourselves will only be able to complete our transition to a biometric passport by the end of 2005. All of us are engaged in comprehensive testing of the contactless chips, using different technologies to communicate with the chip reader. This testing is designed to ensure that passports and their chips are compatible with passport issuance and border control systems.

Now that we have the technical standards, all VWP countries can begin full development and deployment of their respective biometric programs. However, given the time it has taken to resolve these complex operational issues, few, if any, will be able to meet the October 26, 2004 deadline. For example, none of the larger countries—Japan, the United Kingdom, France, Germany, Ireland, Italy or Spain—will begin issuing passports with standardized biometrics by that deadline. The United Kingdom expects to begin in late 2005, Japan to complete transition to full production by April 2006. Others may not come on-line until well into 2006. This delay is not due to a lack of good will but due to significant scientific and technical challenges that has taken us to the cutting edge of changing technologies.

However, there are a number of significant developments in the coming months that will demonstrate how committed nations are to introducing biometrics into their passports. The most important of these is a global interoperability test scheduled for next March involving the United States, Australia, and other nations that will be producing biometric passports at that time. This test will take place in airports and will involve air crew and regular passengers presenting their biometric passport at ports of entry where they will be read electronically. These tests are intended to identify and resolve any problems that may affect the global interoperability of this next generation of passports. These results will be shared with all countries so that the lessons learned can be applied to their biometric passport projects.

Although the legislative requirements of the EBSA apply only to VWP passports and not the U.S. passport, we recognize that convincing other nations to improve their passport requires U.S. leadership both at the ICAO and by taking such steps with the U.S. passport. Embedding biometrics into U.S. passports, that meet the ICAO biometric standard, to establish a clear link between the person issued the passport and the user is an important step forward in the international effort to strengthen border security. To this end, we are introducing “contactless chips” into U.S. passports, electronic chips on which we will write the same bearer’s biographic information that appears visually on the data page of the passport as well as a digitally imaged photograph of the bearer.

As a point of reference, here is the status of our plans to introduce biometrics into U.S. passports. Working in conjunction with our partners at the Government Printing Office, we currently have a Request for Proposals out to the industry. We expect to award a contract for the purchase of integrated circuits and the associated antenna array later this summer. We also expect to produce our first operational biometric passports this December at the Special Issuance Facility here in Washington.

Our first biometric passports produced will be “official and diplomatic” passports, used by USG employees, in order to minimize problems for the general public should there be any production problems. We plan to begin producing biometric tourist passports in February 2005 at our passport agency in Los Angeles. These books will then be used as part of a multi-nation interoperability test that will be undertaken by our colleagues from DHS and their counterparts from other governments such as Australia and New Zealand that will by then also produce passports with embedded biometrics. We hope to be in full production at all 16 passport facilities by December 2005.

Should the current October 26, 2004 deadline not be extended, we anticipate a significant adverse impact on Department operations overseas. Since travelers from VWP countries with passports issued on or after October 26, 2004 without biometrics will need visas to travel to the United States, we estimate that the demand for non-immigrant visas will jump by over 5 million applications in FY 2005. This represents a 70% increase in our nonimmigrant visa workload. There are no easy solutions to handling this tremendous increase in our workload. True, this is a temporary problem because the workload will progressively decrease as VWP countries begin mass production of biometric passports. But in the interim, we would need to implement plans for a massive surge in visa processing, which would involve extra expense, diversion of personnel from other vital functions, and extending service hours, perhaps even to around-the-clock 24/7 visa processing at some posts. Even with a “Manhattan Project” approach, we cannot be sure that we could meet the demand without creating backlogs and long waits for appointments. We are already working hard on public diplomacy outreach to address some of the negative perceptions and misunderstandings concerning tightened U.S. visa policies. Even longer wait times would make it even more difficult to convince people worldwide that America welcomes and values their presence. The delays resulting from this increased nonimmigrant visa demand will also discourage travel to the U.S. as visitors, both tourist and business people, may “vote with their feet” and choose to travel and take their business elsewhere, or defer their travel to the U.S., hurting relations with some of our closest friends and allies, and harming the American economy.

Although we are confident that VWP Countries can meet the October 2006 requirement based on prior representations and information provided by all VWP countries, we know that many will not be able to meet this requirement before then. A one-year extension is not sufficient. At the same time that we, along with the VWP countries, work to expeditiously get our biometrically enabled passport plans in place, we are also not slowing down on any of our other travel security enhancements. Extending the deadline to make sure all countries get it right the first time is only part of our answer. So is advanced passenger screening, and so is increased sharing of lost and stolen passport information, as we have already done with INTERPOL, and which we will press other nations to do. On the diplomatic front, we will continue to pursue vigorous efforts at the highest levels to ensure that the VWP countries remain committed to introducing biometric passports as quickly as possible. Senior Department officials have and will continue to use every opportunity in regularly scheduled meetings with officials from the European Union, the G-8 and the Asia-Pacific Economic Commission to challenge other governments to act aggressively. This issue will be a top priority at all VWP Embassy sections, not just the consular section. As we develop our own passport program we will continue to share what we have learned with others in groups such as the G-8, on the margins of international conferences, and in bilateral exchanges. And we will continue to monitor each country’s progress, continue to press for rapid action and enhance our efforts for increased data sharing with the VWP countries.

We are also asking every VWP country to monitor their progress in meeting the requirements of the legislation. We will thus be able to coordinate at both the political as well as operational level. Among the benchmarks for progress, we will review whether each country has:

- Identified a project manager to be the primary operational point of contact;
- Established a time line for compliance with the program;
- Developed a procurement approach, including purchase of chips, and;
- Established a pilot project to test configuration, durability, operability.

In addition, DHS with Department of State participation is conducting VWP country biennial reviews over the next few months. The schedule for these reviews is ambitious; in-country visits began in mid-May. Interagency teams comprising four to six members will travel for two to three week periods to several countries at a time. The assessment teams are collecting information from host government offi-

cials on a comprehensive list of issues such as lost and stolen passports, the naturalization process, revocations of passports, crime statistics, and local laws pertaining to country police policies. These teams are also addressing law enforcement and data sharing cooperation with the U.S. government. All visits will be completed by July 15.

We will take every opportunity during the course of these visits to remind governments of the importance of introducing biometrics into their passports as soon as technically feasible. We will ensure that they all understand that if they fail to meet the extended deadline, we will have no alternative but to begin requiring visas for travelers from those countries. Further, to continue to tighten our security posture, DHS announced in April that beginning September 30, 2004, it will enroll all VWP travelers in US-VISIT—the program that will track the entry and exit of foreign visitors by using electronically scanned fingerprints and photographs.

The inclusion of biometrics in international travel documents is an important step in continuing to improve our ability to verify the identity of prospective travelers to the United States, especially individuals who might be terrorists, criminals, or other aliens who present a security risk to the United States. The Department of State is working hand in hand with our colleagues at DHS to facilitate legitimate international travelers and to prevent those who pose a threat from entering our country. We are also working with the VWP countries to deploy biometrically enabled passports that enhance the security of travel documents and the safety of international travelers. Ensuring the security of our borders and our nation is our number one priority. That is why we need the additional time to get it right the first time. Thank you.

Mr. GALLEGLY. Thank you very much, Ms. Barry. We will start the questioning period by Members of the Committee. I would just like to start with Mr. Jacksta if I could.

Has the Department of Homeland Security or the Department of State considered any reforms to the visa program to ensure that we are doing everything possible to keep potential terrorists from boarding commercial airlines, or entering the U.S.?

Mr. JACKSTA. Yes, sir. I think we can state that DHS and the Department of State are working closely together. There are a number of initiatives as I mentioned in my opening statement that we are trying to pursue.

One of the important things to do is that we have system advanced information so that we can do the appropriate screening of individuals at the time that they receive or put their application in for a visa, as well as having advanced information given to CBP through the advanced passenger information allows us to do the screening of the travelers, and make a decision on whether that person is a concern, and whether first of all the person should receive a visa, and then second of all, when they arrive, what type of action should we take.

The other actions that I think we are trying to pursue is to put inspectors overseas to work with the carriers to ensure that we have the capabilities to verify the documentation that people present at the time that they try to get on a flight, to make sure that its document then is acceptable and is not fraudulent so that we can prevent individuals from getting on the plane and arriving in the United States and causing a concern.

Mr. GALLEGLY. Also for Mr. Jacksta, has the Department of Homeland Security and the Department of State considered limiting the visa waiver program to native-born citizens from visa waiver countries?

And would not this change the program and prevent terrorists from seeking citizenship in a European country so that they could

more easily avoid detection when they come into the United States? Has that been considered?

Mr. JACKSTA. As far as I know, I do not believe that has been considered, at least in the discussions that I have been involved with in meetings, and that has not been raised.

Mr. GALLEGLY. Ms. Barry, do you have any knowledge of that?

Ms. BARRY. That specific issue, sir, has not been raised, but as part of the review process that we are doing on the visa waiver countries, one of the elements that we are looking at is the naturalization laws of the governments who are participating in the visa waiver program.

So the extent to which they provide naturalization opportunities is an element that will be reviewed through that review process.

Mr. GALLEGLY. But would you or would you not agree that that is an element that could be considered or would certainly mitigate some of those concerns?

Ms. BARRY. Well, yes, sir. We do agree that is a potential vulnerability that we need to look at, which is why we want to understand what another government does to provide naturalization and what kind of screening they do of potential candidates for citizenship.

And to have a detailed dialogue with them on that to make sure that there is not a potential vulnerability in that process.

Mr. GALLEGLY. Are you aware that al-Qaeda is specifically recruiting people with European—either one of you can answer this, but with European citizenship, and not those that were native-borns, but naturalized? Mr. Jacksta, are you aware of that?

Mr. JACKSTA. Yes, sir, we are. Obviously it has been mentioned. It is a concern to us, and that is one of the reasons why we want to make sure that we have a mechanism in place to do the screening of travelers before they arrive in the United States to ensure that we can meet them, and if necessary do the proper clearance of those individuals when they arrive at the port of entry.

But it is a concern. It is something that we need to continue to look at and put in mechanisms to ensure that we identify them. We have worked very closely with the other intelligence agencies and foreign governments to identify anybody who might be a potential concern to the United States, specifically with the visa waiver country individuals.

Mr. GALLEGLY. Ms. Barry, I assume you are aware of that as well?

Ms. BARRY. Yes, sir, we are aware of that. The consular officers in the VWP countries are aware of that threat, and that is one of the reasons that they stay in close contact with their host government to try and get information on lost and stolen passports put into our lookout system just as quickly as possible, so that if the passport from the visa waiver country cannot be abused.

Mr. GALLEGLY. Thank you, Ms. Barry. The gentleman from California, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman. Mr. Chairman, you put forward an interesting idea, and that is that we deal perhaps differently with native-born citizens of these visa waiver countries, and those who become naturalized citizens.

I do want to point out though that those countries may react with great anger to that, just as we have reacted with great anger whenever another country treats one group of American citizens differently from another group.

And when another country discriminates on the basis of race or national origin between one group of American citizens and another. I would like to ask our panel here what deadline could we set for ourselves and not need a further extension from Congress to have this program up and running for U.S. issued passports?

Ms. BARRY. Well, sir, our timeline as I mentioned is to have full production by December of next year. That assumes that there is no mix-up along the way.

Mr. SHERMAN. Well, you are coming before Congress and saying, okay, extend the deadline for a particular hard and fast date. We passed the Administration's proposal to have a hard and fast date, and now they want 2 years more.

What is the date that you will commit your agency to actually meeting, rather than a description of all of the work that you are doing?

Ms. BARRY. Sir, I think we can just give you our best estimate, because no one has used this science before, and so our best estimate is that a 2-year process would allow for us to do a pilot, and if that pilot didn't go well enough, we would have the time to make the fix that we needed. The assumption of 1 year assumes that none of the pilots—

Mr. SHERMAN. So this 2-year extension isn't to give our allies more time. It is to give us more time, and you are saying that we ought to give our own State Department 2 more years to do what they were supposed to do for our national security by this October, and you are not sure that you can meet that deadline either.

You are not about to come here and tell me give us 2 more years and we definitely are going to meet that deadline. Can you make that pledge?

Ms. BARRY. I cannot promise, sir, because no one has ever used this technology before. I can promise you the timeline that we have laid out. We have a procurement process underway.

Mr. SHERMAN. The Chairman is a stickler for time, and I need to move on to another issue related to the Department of Homeland Security. I talked earlier in my opening statement about a double failure; the fact that we can't get our allies to do it, and we can't do it ourselves.

But there is a third failure and that is that we are giving huge contracts to companies that are part of the Bermuda triangle situation. So not only can't we get anything done, we can't even at least keep the money in the country, our own tax dollars in the country.

Congress has passed, and it is now in the Homeland Security appropriations bill, provisions saying that you can't actually disburse any funds to countries that have incorporated foreign countries for tax avoidance.

How would this, if we passed this provision, how would this disrupt the operations of your department?

Mr. JACKSTA. Sir, obviously we want to move forward with our US-VISIT process, which encompasses a lot of technical issues that we need the assistance of contractors to help us.

Mr. SHERMAN. And you think that Benedict Arnold contractors are needed in order to meet our objectives?

Mr. JACKSTA. No, sir.

Mr. SHERMAN. So we can run this, and if that censure doesn't get a dime, we can still run the Homeland Security Department effectively?

Mr. JACKSTA. I think that we would continue to move forward and I think, yes, that we would do our best with what we have. The issue is, sir, that there is a number of mechanisms and programs in place today.

Obviously with this contract, we would be able to improve and enhance, and keep even with the new technologies that are out there. We want to make sure that we have the best security, and at the same time facilitating travelers.

Mr. SHERMAN. If I can interrupt. When you are deciding who gets a contract, to what extent do you take into consideration whether you are dealing with a Benedict Arnold corporation; one that has renounced its corporate U.S. citizenship for tax reasons?

Is that part of your process, and how significant a part? Is it a disqualification today if somebody is applying for a contract with your department today?

Mr. JACKSTA. Sir, I have to be honest with you. I wasn't actively involved with that, but I do know that DHS, as well as other government agencies, have specific programs in there. There was a review process, and clearly the awarding of this contract by the Department was done within the current law.

Mr. SHERMAN. Thank you, but you haven't said anything. Moving to another issue. A lot of people have names that are not spelled with the Latin alphabet, and those names, for example, in Arabic, Farsi, and Hebrew, can be transliterated into English characters, or Latin characters, in a variety of different ways.

Even journalists have not decided how to spell Osama bin Laden. Has the U.S. Government, with all of the agencies, including State and Homeland Security, agreed on how to transliterate Farsi, Hebrew, and Arabic names so that if you know that somebody should not be admitted, and who spells their name this way, they are not admitted to the country just because another agency transliterates their name another way?

Do you have a list of how to transliterate a list of names in their other languages in an exact agreed way as to how to state them in Latin characters? And I should point out though that the Chairman hosted some very good field hearings on this issue at the Los Angeles Airport.

And I asked the question then, and I was assured that progress would be made by about now, and where does it stand?

Mr. JACKSTA. Sir, from the ISI system that basically does the name checks, there is a number of different language analysis programs that are in there that allow for the capability for names that are mis-spelled, or for names that are unique to be identified with possible matches.

So there is the capability. The system is in place, and it needs to be continually evaluated and determine whether it is meeting all the needs of the agencies.

Mr. SHERMAN. So different agencies are free to transliterate a name in 4 or 5 different ways, and you are counting on the computer to tell you, well, the name may be in this manner, or it may be in that manner.

There is no—when you do the initial input, it is a free form, but you are counting on the computer to match several different spellings up?

Mr. JACKSTA. Sir, I would not say it is free form. There is a software package that allows us to identify those. When the person arrives, the customs officer also verifies the documentation and verifies the name, and ensures that the name that is being run is accurately spelled, and—

Mr. SHERMAN. Accurately spelled in Latin characters, and in English, and what we are familiar with in the English language. But when the names are originally put in, the same name, spelled the same way in Arabic, could be spelled several different ways in “English.”

And you don’t have, in spite of the pledges that were made at the last hearings, any system to make sure that an Arabic name spelled the same way in Arabic every time, is spelled the same way in our computers every time?

Mr. JACKSTA. No, sir.

Mr. SHERMAN. Well, that shows how useful the last hearings were in getting the attention of your agency, and I believe that my time has expired.

Mr. GALLEGLY. Mr. Tancredo.

Mr. TANCREDO. No questions. Thank you, Mr. Chairman.

Mr. GALLEGLY. Ms. Berkley.

Ms. BERKLEY. Thank you, Mr. Chairman. Let me ask a question. What tools or resources does CBP need in order to prevent the entry of terrorists like Richard Reid, or Moussaoui, to this country? What additional resources or tools do you need from Congress?

Mr. JACKSTA. Basically, Congress has been very helpful and provided us with the appropriate resources. The tools that we need is we need advanced information, which Congress has allowed us to get from the carriers.

It allows us to do the screening. We have the automated systems that allow us to do the checks, and we continue to evaluate different software packages and different systems that allow us to do research on travelers coming into shore that we stop them.

We are working very closely, and I think we are making headway, regarding the communications and coordinations of the other Federal Agencies, and the databases, so that when the U.S. Government has a name of an individual that is a threat, we can make sure that we stop that individual at the port of entry, or from getting on the plane.

Those systems are being developed. There are a number of other types of equipment that we are putting out into the field; equipment with x-ray technology that allows us to do examination of baggage, as well as radiological equipment.

As you know, all inspectors assigned to our primary locations, at primary inspection sites, have radiation detection equipment with them to make sure that we can stop anybody who might want to bring in a weapon of mass destruction into the United States.

So there is a lot of different equipment that we are continuing to put out there, and the support of the Congress has been very good in this area.

Ms. BERKLEY. There are a number of nations who participate in the visa waiver program who have relatively simple citizenship requirements. Some as little as 3 years.

Is there any way to pierce the veil and go beyond the fact that they are in a visa waiver country, and find out their true country of origin in order to check their background before they come?

Mr. JACKSTA. Well, as mentioned, we are doing reviews right now in the visa waiver countries, and we have our employees over there evaluating the systems that the foreign government may have for the issuance of documentation, as well as for the application process for their documentation, their passport.

So there is a capability, and that is something that might come out of the recommendation from that review, is how do we work and continue to work with the foreign government to ensure that there is a transfer of information on travelers that may pose a concern to the U.S.

Ms. BERKLEY. And if we have learned anything in the last few years, these terrorists are very patient people, and if it takes 3 years plus to get that visa, they will do it.

Let me ask you something else. If in December 2005 all U.S. passports have biometric information will other nations be able to read and make use of this?

Mr. JACKSTA. Basically, I believe that the goal is to work within the ICAO standards to ensure that all the—that the mechanism and the system that is developed to read biometrics can be read by other governments, so that we would have a unified and consistent way of issuing documentation.

Ms. BARRY. Yes, I would agree with that, and which we hope to start in the spring with our partners is to make sure that the readers that everybody procures will be able to read our document accurately and reliably.

Ms. BERKLEY. And you think by December 2005 that will be the case?

Ms. BARRY. Yes. As I said, if all goes well, it is a short timeline, but if all goes well, we will certainly have our production, a robust production by then. And we hope that the other aspect of this, which is the readers in use at airports around the world, will be on the same timeline and marry up nicely.

Ms. BERKLEY. I would like to ask the both of you one more question if I may. I was not quite certain what Mr. Tancredo's opening comment meant, but short of closing down our borders to all foreign tourists, and perhaps shooting those few that actually want to come to the United States on vacation, is there—do you feel with your experience and your background, and your training, that there is a way to invite tourists into our country and still manage to keep the terrorists out? I would like to hear your opinion on that.

Mr. JACKSTA. Well, I would state that first of all, yes, there is a way, and we are making every effort to ensure that anybody that is identified as a terrorist is identified through our automated system, as well as the training. Our inspectors are trained to identify individuals.

So I think we have a good mechanism in place to protect our borders. Our inspectors are out there, and the systems are out there. By allowing us to do our job, and to focus on the people that are high risk, it allows us to facilitate the 99.9 percent of the people that arrive at our borders every day.

They are low risk, and we want to get them out of the system. By having advance information, we believe that we can do some of that screening by using specially trained inspectors, and having them out there asking questions and reviewing documentation, I believe that we have a mechanism in place to protect our borders. And at the same time to prevent individuals that might be a threat from arriving.

Ms. BERKLEY. And so what you are actually saying is that the visa waiver program is actually an aid to you so that you can concentrate your efforts on those that might want to do us harm?

Mr. JACKSTA. Yes.

Ms. BERKLEY. Thank you. Ms. Barry.

Ms. BARRY. Yes, I would very much agree with that. We believe that the visa waiver program is a reasonable strategy to get the benefits for the facilitation of travel. We certainly recognize that there is a risk involved, but we believe it is a low risk, and that with the totality of security measures that affect this population, it is a risk that can be managed.

Ms. BERKLEY. I quite agree with you both. Thank you very much for your testimony today.

Mr. GALEGLY. Mr. Rohrabacher.

Mr. ROHRABACHER. Well, first of all, let me note that while I disagree with Mr. Sherman's characterization of the corporations that have fled the taxes and regulations of our country, I disagree with his characterization of the Benedict Arnold corporations.

I mean, it is sad that corporations feel that they have to go to other countries because of the taxes or regulations here being too oppressive and not permitting them to compete perhaps internationally.

Mr. SHERMAN. If the gentleman—

Mr. ROHRABACHER. No, no, let me finish, Brad, please. I have my time now. Okay. Please. So while I disagree with that, and will refrain from referring to my Democratic colleagues as King George's taxers and regulators, but I will say that I agree with Mr. Sherman, and take very seriously his admonition about the spelling of the names, and the computerization of potential security risks.

And I agree with him that you are not being responsive to a point, to a very valid point made by a Member of Congress on a potential security risk to this country. And I would hope to see that this is dealt with seriously and soon, because this is a flaw in the system that he has pointed out, and we had better deal with that.

So to begin that way, let me ask a little bit about the visa system and people who use it and people who don't use it. How many countries now have a visa free type of entry into our country?

Ms. BARRY. The visa waiver program affects 27 countries right now. Canada has no visa requirement at all under a separate piece of legislation.

Mr. ROHRABACHER. Pardon me. They just called me to my other Committee, but I will finish here. But you said 27 countries?

Ms. BARRY. 27 countries are in the visa waiver program, and Canada also has visa free status, but on a different basis.

Mr. ROHRABACHER. In terms of the number of people who are here illegally, do we know whether or not they are here after coming here from the visa free countries, or whether or not they came here with visas and overstayed those visas?

Mr. JACKSTA. Sir, there are people that overstay their visas, both people that are issued visas, as well as people who participate in visa waiver programs. There is a mechanism in place that we can verify that individuals have not left the United States.

That information is provided to the Immigration and Customs Enforcement Agency, ICEA, and they basically follow up on those individuals who have overstayed their visas.

Mr. ROHRABACHER. Okay. So right now we know when someone comes in with a visa whether or not they have gone back to their home country and done that? When did that happen?

Mr. JACKSTA. Basically, we have had a system for a number of years, sir, where basically we close out the I-94, and that was the hard copy, the paper, and then we have automated the system out of the enhancement for the US-VISIT, is an automated system to verify when a person comes in, and how long they are allowed to stay for, and then whether they left the United States.

Mr. ROHRABACHER. And how is it confirmed that they have left the United States?

Mr. JACKSTA. Basically the mechanism that we are testing right now at Baltimore and Miami, the closing out of the records through the biometric check of the U.S. visits, but in addition to that—

Mr. ROHRABACHER. So you are testing it right now?

Mr. JACKSTA. No, there is one way that we are testing it biometrically. The other mechanisms that we use is the I-94 Card that is issued to people from both visa waiver country travelers, as well as people issued visas.

That card is taken, and we keep a copy at the time that they arrive, and when they depart the United States the requirement is for that card to be provided back to the government.

We take that and we automate it into a system so that we can close the record out. In addition, based on—

Mr. ROHRABACHER. How long has that system been in place?

Mr. JACKSTA. That system has been in place for years, sir, and then the other mechanism that we have, which we now utilize in an automated fashion, is the Advanced Passenger Information.

When the airlines provide that to us, it sets up the database, and then we verify when the person leaves through an automated system also.

Mr. ROHRABACHER. Let me ask you a question then. So you know how many people have come here on visas and overstayed their visa?

Mr. JACKSTA. There is a mechanism to determine that, yes, sir.

Mr. ROHRABACHER. And how many have done that in the last 10 years?

Mr. JACKSTA. Sir, I don't have that number with me today. We can get back to you with that.

Mr. ROHRABACHER. I would like to know that, how many if you could, and just for the record, Mr. Chairman, I would like to know

that on a country-by-country basis. And I hope that you will take this request.

I don't want to be too harsh on you and ignoring Mr. Sherman's request the last time, but this is a very serious issue for me.

Mr. SHERMAN. The calculator might not have that many digits.

Mr. ROHRABACHER. Okay. Let me ask you. Is this system mandatory or voluntary?

Mr. JACKSTA. Basically the system is mandatory, sir. We do collect and require the I-94, and we take it at the time of arrival, and then when the person leaves, it is required by law to provide that back to the individual.

Mr. ROHRABACHER. So every person that comes in on a visa is required then—is there some process that goes on to ensure that we know when he or she has gone back to their own country; is that right?

Mr. JACKSTA. Yes, there is a mechanism.

Mr. ROHRABACHER. Okay. And that has been in place for a number of years?

Mr. JACKSTA. Yes, sir.

Mr. ROHRABACHER. All right. Well, I need to know more about that, and I would like again to have the list of the numbers of people who have overstayed their visas in the various countries for the last 10 years. Thank you very much.

Mr. GALLEGLY. Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair. When this program was initiated in 1986, would you say that it was primarily initiated to reduce paperwork and the amount of staffing required?

Ms. BARRY. I would say that was one of the major factors in driving this program. At that point, it was very clearly called a pilot program, but the Department of State was certainly not getting the resources that we felt that we needed to adequately staff consul offices around the world.

Ms. MCCOLLUM. So this program came to be primarily to reduce paperwork and the amount of employees needed to process that paperwork?

Ms. BARRY. Yes.

Ms. MCCOLLUM. So now we have taken a system that was set up to do something entirely different from what we are asking it to do now since September 11. Is that not correct? We are radically using this program, this visa waiver program, not only to reduce paperwork, and to reduce personnel, but now we are using this program to weed out potential terrorists?

Ms. BARRY. Well, the program started on a pilot basis, and I think everyone's appreciation of the program changed over time. The criteria for the program was finally put in a statute, and by the time that was done, it was recognized by everybody that this program needed security measures to back it up.

Ms. MCCOLLUM. So that statute is now quite clear that there has to be a very high bar in order to get into this program, and only two countries have been removed off of it, Argentina and Uruguay.

But the premise for also coming up with this program was the number of people who do not overstay their length of their visa when they come in. Along with Mr. Rohrabacher's questions, I would like to know how often this system is audited.

Based on the information that I have received on the way colleges and universities, and foreign exchange students, were required to report, and all the paperwork that was never looked at, because we did not have the personnel in place to look at the paperwork.

In other words, we required something that looked nice on the surface, but we did nothing to help the employees who had to go through all this massive information that we collected in a timely fashion to make things workable.

Would you say that the—remember back a couple of months ago when all the British flights were being canceled? Now, supposedly we would have had okayed somewhere along the line, either through this visa waiver program, or through a student program, or another waiver program, all the passengers coming aboard.

Do you know—and if this is something that I have to give some background on outside of a public hearing, do you know if it was the visa waiver program that was picking up people that had listed themselves on the manifests for coming, or was that just—

Mr. JACKSTA. Basically, during the Christmas holidays and the flights of interest, what we were doing was we were working with the carriers and the current law requires advanced passenger information at the wheels up of the flight.

We were working very closely with the foreign governments, and the carriers, and the other Federal Agencies, to get that information on those travelers before wheels up, close to an hour or 2 before the flight was supposed to leave from the foreign locations, and we would run those names against our databases to verify whether there was anyone who was a possible match.

That was the only mechanism in place to determine who was going to be on those flights, and some of those travelers that were on those flights were visa waiver country travelers. But we were able to do the databases before the flights left.

Ms. MCCOLLUM. Okay. Thank you. And, Mr. Chair, I am concerned with many of the points that have been brought up about the consistency in the way the names are spelled between countries, and as Mr. Rohrabacher pointed out, what are we doing with this information when we know people have overstayed their visas.

But I am also very concerned about what is going on in the department in general, especially in dealing with international foreign exchange students, scientists who want to come to this country who are not part of that program.

They have to go through the same lengthy processes that everybody else does when they might have been a frequent guest lecturer in this country, or a student who is returning to come back.

So the consistency in here is really lacking, and I think when I read things, Mr. Chair, in some of the information that was given to this Committee, that when people cannot use the mechanical mechanism to swipe a passport, and they might have to enter a number, that quite often the numbers aren't entered because of the lines and the efficiency that we put in.

So I think that we seriously need to look at dollars to this Department to fulfill their mission, and also the support of the number of employees that they are going to need to make Americans feel safer. Thank you, Mr. Chair.

Mr. GALLEGLY. Mr. Pitts.

Mr. PITTS. Thank you, Mr. Chairman. Ms. Barry, the State Department maintains a terrorist watch list. When you add a terrorist suspect based on domestic or foreign intelligence, does the State Department check its records to see if the suspect has sought a visa, and how quickly do you notify DHS of the new information so that they can check where the suspect entered pursuant to the visa waiver program?

Ms. BARRY. Yes, I will be happy to explain that process. First of all, it allows me to say something on the issue of names. The name of record that we use is the name on the passport, but obviously you have alluded to the fact that we get intelligence reports.

And in the course of that intelligence report, we just get the name as best as our agent was able to get it. So we do have special algorithms in our computer system to take, let us say, the name Mohammed spelled one way, and Abdullah spelled another way, and match it up with the Mohammed Abdullah that we might already have in our system.

Either officially because he came forward and applied for a visa, or because some other agency had a similar concern and opened a file on that person. So there is software logic that helps to do what we call fuzzy matching, and take what we may have as a very partial name from intelligence officers, and try and match them up with case files already existing.

The President has determined that all terrorist information, wherever it comes from, whichever agency develops it, is transferred to the Terrorist Threat Integration Center.

So the program that the State Department used to have, called TIPOFF, has been transferred completely now to TTIC as we call it. TTIC pulls together a lot of analytical resources to try and take that case file further, and figure out exactly who is a threat, and what the nature of their activities are.

To the degree that they can come up with some identify that they think is pretty good, they give it to the terrorist screening center for watch listing purposes. And we are now all using the same watch list for counter-terrorism measures; DHS, State, and everyone else, especially from border security.

And the same lookout information is being used also for visa waiver travelers and also for visa holder travelers as well.

Mr. PITTS. Now, it is my understanding that the U.S. Government is working on a program to help airline employees at foreign airports better identify fraudulent passports and other documents. Can you provide us with a little update on that program?

Mr. JACKSTA. Yes, sir. We have a program, and we have had a program that the Legacy Immigration Service had, and what they called the carrier initiative program, where we had individuals assigned to foreign locations to work with the carriers in these locations, and give them training, and to assist them in identifying individuals, as well as documents that may be utilized to gain entry into the United States.

It is a very successful program, and under CBP, we have continued to move forward with that program, and we are actually expanding it to what we call an immigration security initiative, which is an initiative where we are putting inspectors overseas,

and specifically this month, we put individuals in the Netherlands to work at Skipo Airport to work with the carriers on flights going to the United States to basically assist in reviewing the documentation that travelers.

We believe that is going to be a very important program, and that will allow us to do some free screening for travelers that might be a higher risk based on their travel, and based on their documentation.

It is something that we are testing for 90 days and we have intentions to move out to other locations. Other governments already have these programs in place, and have individuals assigned to foreign locations.

So we think that this is a good effort to ensure that people who may be a concern to the United States are prevented from getting on the plane, and appropriate action could be taken overseas. And I think that you will see that effort continue in DHS.

Mr. PITTS. The 2004 Department of Homeland Security Inspector General Report, and other reports, have found a large problem with lost and stolen passports, and that the information provided by the visa waiver program governments is not being thoroughly checked against entry and exit information.

Also, the Inspector General Report states that when port of entry officers spot fraudulent passports, they must return these documents back to the visa waiver program traveler.

And they recommended that they would seize the fraudulent passport, and has that recommendation been implemented? What is the status and what is DHS doing to solve this problem?

Mr. JACKSTA. Sir, I would like to begin by telling you that we have very good relationships with the foreign governments and Department of State. We work very closely to receive any type of document or passports that might be stolen.

And we enter them right into the system, and so that our inspectors at the port of entry can ensure that individuals are stopped. We do that on a regular basis, and we have had a number of success stories where governments have given us information where we have stopped individuals.

Regarding the issue of the identification of fraudulent documents at the port of entry, the goal is of CBP and DHS is to actually seize the documents at that port of entry. When we return the individual, if the decision is made not to prosecute and that basically turn the person back to the country that they came from, the international agreement is that first of all that the country where the individual came from has to accept the individual back until they are formally accepted into the United States.

The ICAO standard indicates the concern of providing the fraudulent documents back to the foreign government so that they can make a decision has been in place, and that is the question that you are raising.

We are working to ensure that when that happens that those documents are still protected and no longer can be utilized by anyone. So the document itself we believe is never going to be used. We annotate it. It is a destroyed document, but in certain cases the foreign government will not accept that individual until they receive the person and the documents.

But it is something that we continually evaluate and it is something that is a topic of discussion whenever we meet with foreign governments on how best to handle individuals that do get on a plane and arrive in a foreign location with a fraudulent document.

Mr. ROHRABACHER. Thank you, Mr. Chairman.

Mr. GALLEGLY. Mr. Jacksta, on that point, on the I-94 program, entry/exit, to your knowledge, has there ever been a recognized terrorist or somebody on a terrorist list that was a visa overstay that has ever been deported in the history of the country under this program?

Mr. JACKSTA. Sir, I would have to be honest with you and say that I do not know that answer. I can get it back to you. I can check our records, yes, sir, but I—

Mr. GALLEGLY. Do you think there is possibly ever been an instance of even one person has been deported under this program?

Mr. JACKSTA. I believe so, yes. I believe strongly that there are parts—

Mr. GALLEGLY. That might be a good indication as to how successful the program is, and I would appreciate it if you could get that back to us.

Mr. JACKSTA. Yes, sir.

Mr. GALLEGLY. Mr. Tancredo did not have a question, and I will allow him to have one question before we move on to the next panel.

Mr. TANCREDO. Thank you very much, Mr. Chairman. I appreciate that. Mr. Jacksta, I just am really trying to understand exactly how you can portray a process whereby we forego one of the mechanisms that we use to make sure that people that are coming into this country are people who are not going to come in for a nefarious purpose.

And foregoing that process is going to make us safer, and this is a particular point of view that you present to us, that we are actually helped outside of that. And if that is the case, of course, we should dump the whole concept and use the visas anyplace in the world if we are going to be safer by not having that kind of review.

When we are looking at the fact that today there are about 15 million Muslims that now inhabit European countries, and most of those countries by the way are on the visa waiver list, and we know that is a source of great concern to us, that particular population.

And yet we are saying that delaying this process for 2 years is going to make us safer. That is what you essentially said to the gentle lady from Nevada. I am confused by that.

How exactly are we safer by not having a visa program in place for countries that have huge populations of people that we are concerned about? And whether we like it or not, I know that we don't want to think about the possibility, and we don't want to state the possibility that we are concerned about a particular group of people, ethnic or religious.

But the fact is that we are, because that is where the terrorists come from. So why should we not then be worried when you say that we are not going to use this process for a couple of years?

Mr. JACKSTA. Sir, first of all, I would like to begin by indicating that obviously individuals that apply for a visa overseas and allows

the U.S. Government to verify and check the individual before they come to the United States is a secure mechanism that has worked very well.

The visa waiver countries where the U.S. Government has decided that we trust the foreign governments that are participating in the program to do good reviews, and to have records——

Mr. TANCREDO. France, for instance.

Mr. JACKSTA. France. That there is a mechanism in place for them to ensure that documentations that are issued by that government to individuals are documents where the individual deserves to have those documents.

So we need to continue to work there. I recognize that those travelers pose a risk to us, and that is why we are trying to address it with not shutting down the whole travel industry.

What we are trying to do is work very closely starting September 30, we will be collecting biometrics at the port of arrival. We will be identifying the individuals through a fingerprint. We will be keeping track of their travel in the United States.

And so there is the capabilities, and there is a mechanism to ensure some type of security. But there is risk there by not having them issued visas overseas.

I think the position is that we evaluate the risk, evaluate what the foreign governments are doing to control their documents, evaluate the threat that those types of travelers may present to us, and then we make a decision, and that is what we are doing right now.

Mr. TANCREDO. But you agree that we are not safer because we are not imposing visas or the visa process on these, and we are not safer because of that?

Mr. JACKSTA. I would say that we are safer when we evaluate an individual before they arrive at our shores.

Mr. TANCREDO. That is the visa process.

Mr. JACKSTA. That is the visa process, or other programs that we are putting into place with inspectors in foreign locations to review the documentation and advance information.

Mr. TANCREDO. Thank you, Mr. Chairman.

Mr. GALLEGLY. I thank our two witnesses, and we appreciate your testimony. I look forward to your written response on a couple of the questions that we had asked to follow up, and with that, we thank you very much, and move on to our second panel.

Mr. JACKSTA. Thank you.

[Pause.]

Mr. GALLEGLY. I would like to welcome our esteemed second panel. I would like to introduce each of them before we take their testimony. Our first witness on the second panel is Mr. Mark Krikorian, who is the Executive Director of the Center for Immigration Studies, a nonprofit, nonpartisan research organization, in Washington, DC, which examines the impact of immigration on the United States.

Mr. Krikorian frequently testifies before Congress and has published numerous articles in *The Washington Post*, *New York Times*, and elsewhere. He has appeared on several radio and television shows including *60 Minutes*, *Nightline*, and National Public Radio.

Mr. Krikorian holds a Master's Degree from the Fletcher School of Law and Diplomacy, a Bachelor's Degree from Georgetown University, and spent 2 years at Yerevan State University in the then-Soviet Armenia.

Our next witness is Mr. Bruce Wolff. Mr. Wolff is currently the Executive Vice President for Sales and Marketing for the Marriott Lodging Division of the Marriott Internationals, Incorporated.

In this capacity he is responsible for business opportunities, industry relations, and marketing for all of the company's lodging product brands, including Marriott Hotels.

Mr. Wolff has had an extensive airline and travel industry career that began in 1968 with Trans World Airlines. Mr. Wolff is a graduate of Lehigh University. He is a board member of Pegasus Systems, Incorporated, which provides electronic hotel room reservations to the hotel industry worldwide.

He also serves on the board of Travel Industry Association of America, where he is also the 2004 National Chair.

Our last witness on Panel Two is Mr. Robert Leiken. Mr. Leiken is the author and editor of several books, and is currently the Director of the Immigration and National Security Program at the Nixon Center, as well as a non-resident Senior Fellow at the Brookings Institution.

Mr. Leiken worked for a decade in Mexico, where he was a Professor of Economic History, and at the National Agricultural University. Mr. Leiken has been a Senior Associate at the Carnegie Endowment for International Peace, and also is a Research Associate at Harvard's Center for International Affairs, and Senior Fellow at the Center for Strategic and International Studies, and a fellow at the International Forum for Democratic Studies.

He has also taught at MIT, Boston University, and Boston College. Mr. Leiken graduated from Harvard College magna cum laude, and phi beta kappa, and received his doctorate from St. Anthony's College, Oxford University. I welcome all of you and with that, Mr. Krikorian, we welcome your testimony.

**STATEMENT OF MARK KRIKORIAN, EXECUTIVE DIRECTOR,  
CENTER FOR IMMIGRATION STUDIES**

Mr. KRIKORIAN. Thank you, Mr. Chairman. The question before us I think is not really do we keep the visa waiver program or do we get rid of it. The mismatch between the State Department's ability to process visas and the mushroom number of foreign visitors, because of the visa waiver pilot program, started many years ago in the late 1980s, makes it all but impossible now to maintain a situation where foreign visitors are able to come to the United States, but we apply visas to all of them.

In other words, the tooth paste is out of the tube in some sense, and the ending of the visa waiver program would create some of the results that the travel industry lobbyists suggest.

So the question is not do we get rid of it or keep it, but how do we manage it in such a way that it actually maximizes the benefits and minimizes the risks, and there are a number of recommendations that I would like to just bring to the Committee's attention.

First of all, the management of the program needs fixing. A recent internal audit of the visa waiver program showed that nobody

seems to be in charge of it. In the transition from INS to DHS, the person who was in charge of the visa waiver program was assigned to different duties, and nobody in DHS or outside of DHS seems to have any idea who is in charge.

One person that was cited in this audit said that the program was on auto-pilot, with no designated manager or overseer, and one of the results of this is that there doesn't seem to be anybody responsible for the periodic country reviews and assessments of the success or failure of the program.

Every 2 years these country reviews are supposed to take place, and is mandated, and they haven't happened. They may well be taking place now. We don't know about it. I have heard that there is some effort to do this, but there has not been the kind of review that is necessary to see whether the foreign visitors from particular countries are in fact overstaying at higher rates than they had expected or that we had expected before.

The second requirement is that the criteria for being included in the program need to be tightened up. First of all, DHS has to carry out these required country reviews on schedule, because without them, we don't know whether people from a particular country are in fact now beginning to overstay at much higher rates than before.

Secondly, the criteria that we use to judge whether the program is successful or not needs to include not just visa refusal rates, which are now being used, but also overstay rates.

The rate of refusal of visa applicants in that foreign country at our consulates tells us something, but not that much, because those refusal rates can be affected by political pressure. In other words, consular officers being pressured to okay more visa applications than they would like.

Overstay rates on the other hand are a solid metric that tells us whether people are in fact violating and abusing the program. The most important criteria for participation needs to be a hard and fast requirement that travelers have the biometric documents to verify their identity, as opposed to just the machine readable part of the passport which verify the names.

The House recognized the importance of this deadline just a few days ago in passing the 1-year extension, and in not passing a 2-year extension. The 1-year deferral is probably sensible because of logistical problems that we heard about in the previous panel, but putting it off more than that is sending a message that we really are not serious about securing this program.

And I would just like to put everybody at ease to some degree that sticking to that 1-year deadline is not going to result in the end of the world. Secretary of State Powell testified a couple of months ago that the U.K. and Japan are in fact on track to meet this new deadline.

And travelers from those two countries represent the majority of visa waiver travelers. So even if the other 25 visa waiver countries were booted out of the program temporarily because they were not able to meet the October 2005 deadline, the additional work that would be placed on the State Department's shoulders would not be as onerous as they might suggest.

The third thing that is necessary to tighten up the program is expanding the immigration security initiative to all visa waiver

countries, and this is something that Mr. Jacksta referred to as a pilot program to place our inspectors at the foreign airports, and we are starting in the Netherlands.

This is something that needs to be expanded, and I would suggest probably should be a condition of participating in the program. If you want your travelers to be qualified for this, you have to welcome our inspectors at your airport.

And, fourth, but by no means least, the visa waiver program, in order to succeed and in order for people to trust it, have to have a backup, because no matter what the system is, it is going to fail sometimes.

Some  $\frac{1}{3}$  to  $\frac{1}{2}$  of the 10 million illegal aliens here are visa overstays, whether from visa waiver or non-visa waiver countries.

We need interior enforcement of the immigration laws as a backup so that when the consular screening and the border screening fails, as they inevitably will sometimes, we have a backup, and that would have to include work site enforcement, cooperation from state and local governments, and immigration enforcement, and penalties for people who overstay their visas.

The point to US-VISIT and to these abilities of knowing who is overstaying, is not just for researchers like me to know what the rates of overstay are, but to actually facilitate the removal of illegal aliens.

So to sum up, there is a way to maximize the benefits and minimize the risks of the visa waiver program, but only if it is well managed, and it has high standards for inclusion, and it is responsive to security concerns, and it is backed up by muscular ongoing interior enforcement.

None of those things exist today, but none of them is pie in the sky either. They are achievable objectives, and only if we implement those changes can the visa waiver program actually function the way that we want it to. Thank you.

[The prepared statement of Mr. Krikorian follows:]

PREPARED STATEMENT OF MARK KRİKORIAN, EXECUTIVE DIRECTOR, CENTER FOR IMMIGRATION STUDIES

The Visa Waiver Program (VWP), under which more than 15 million people a year are admitted with only the most cursory screening, is undoubtedly a soft spot in our efforts to prevent the entry of terrorists. Utilizing a kind of positive or reverse profiling, the program offers expedited treatment to travelers from 27 different countries, not because they as individuals appear to pose little threat, but because they and their fellow citizens as a group are judged to be unlikely to violate immigration laws.

It is not hard to see why a number of terrorists have chosen this route to gain entry to this country. Recently apprehended terrorists Zacarias Moussaoui and Richard Reid, with their own French and British passports, along with Ahmed Ajaj and Ramzi Yousef, both involved in the first World Trade Center bombing, with photo-substituted Swedish and British passports, all used the Visa Waiver Program.

Rather than undergoing screening at the consulate in their country, which would include an interview with an official who speaks their language, is familiar with country conditions, and is trained to evaluate local documents, the VWP traveler steps briefly before an immigration inspector, usually at the airport, who has just a few seconds to examine the passport, ask a couple of questions in English, and quickly run a name check. In the embassy, the deck is stacked in favor of the consular officer because it is up to the traveler to prove that he qualifies for the visa. At the airport, the opposite is true—it is up to the inspector to prove that the traveler has broken the law before he can be refused entry. The decision to refuse admission must be reviewed by a supervisor, and involves lots of paperwork.

On the other hand, eliminating one layer of scrutiny for visitors from the VWP countries has significantly reduced the overall cost of screening foreign visitors, and probably increased business and tourist travel to the United States, bringing tangible economic benefits. As it turns out, according to a recent General Accounting Office (GAO) report, VWP visitors have been a pretty good bet. While there are no truly reliable data on overstayers, according to the most recent GAO report on the subject, VWP visitors had the lowest apparent overstay rate of all the groups they looked at.<sup>1</sup>

Because for the most part the Visa Waiver Program has worked as intended, I'm not ready yet to consign it to the ash heap of immigration history, like U.S. Visa Express, the disastrous program in Riyadh that brought us some of the 9/11 hijackers. At the same time, because the VWP operates counter to our latest efforts to "push out our border" and because international conditions are much more dangerous now than when it was first implemented, it is absolutely vital that if we hope to continue the program, we need to strengthen it in several important ways.

*Program Management Needs Fixing.* Most immediately, the Department of Homeland Security (DHS) and specifically, the Bureau of Customs and Border Protection within the Border and Transportation Security Directorate (BTS), needs to assume control of the VWP and appoint a new leader to replace the one lost in the shuffle of transition from INS to DHS. Incredibly, according to an internal audit recently completed, no one in the Department, or other departments, not even the staff in the bureau, seems to know who's in charge of the VWP. One official cited in the report said the program is on "autopilot . . . with no designated manager or overseer."<sup>2</sup>

Apparently, DHS has yet to assign anyone the task of conducting the periodic assessments and country reviews to determine how well the program is working. Despite direct orders from Congress and years of complaints from the outside, DHS still has not figured out how to collect and analyze data on departures and overstays, so that policymakers can make a rational decision on the program. DHS has limited systems in place that are better than nothing (APIS and ADIS, the Advance Passenger Information System and the Arrival Departure Information System) but has yet to attempt any kind of analysis.

One of the scariest observations made by the auditors was that the inspectors at the Port of Entry have no procedures for checking if an applicant is using a lost or stolen passport, even though we are doing better at getting the information on the thousands of passports stolen in VWP countries (the very existence of the VWP program is one thing that makes these passports so valuable). The report cited law enforcement officers who noted that lost and stolen passports show up "several times a week or more at major international airports."

Even worse, under current procedures, if a traveler is caught with fraudulent documents, often the documents are not confiscated, but given right back to the traveler, apparently to facilitate return to the home country.

*Fine Tune Criteria for Inclusion.* Because the threats to our security are so much greater and more diffuse now than in the 1980s, when the VWP was launched, it is vital that we tighten up the criteria under which countries are selected and retained in the VWP. First, DHS must carry out the required country reviews on schedule. Second, the criteria for participation in the program should include a benchmark for overstay rates as well as refusal rates and disqualification rates. The reason is that overstay rates reflect actual behavior of real visitors. Refusal rates, on the other hand, only reflect consular speculation about visitors' likely behavior and the risk that the visitor will overstay. Moreover, refusal rates are subject to politically motivated manipulation in the form of pressure to issue visas from senior embassy staff and the host country government. This concern is not theoretical. The State Department has proven to be very susceptible to such pressure in the past.<sup>3</sup>

To support this change, lawmakers should insist that DHS develop better information on overstays. There are no excuses now, even before US-VISIT's entry-exit feature is fully operational. Under APIS/ADIS, airlines are already providing the data, under threat of financial penalties.

DHS recently announced its intent to begin enrolling VWP travelers in US-VISIT, which will collect their fingerprints and complete a more thorough database check.

<sup>1</sup>General Accounting Office report GAO-04-82, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, May 2004, page 41.

<sup>2</sup>Department of Homeland Security, Office of the Inspector General, "An Evaluation of the Security Implications of the Visa Waiver Program, OIG-04-26, April 2004.

<sup>3</sup>For an example involving Ireland, a VWP country with known terrorists operating within it, see "Dissent in Dublin," *Foreign Service Journal*, July 1996.

While this step is appropriate, it is important to recognize that without biometric documents, it will still be difficult to authenticate identity.

In this security climate, the most important control criteria for participation has to be a hard and fast requirement that VWP travelers have biometric documents that permit authentication of identity, not just machine-readable passports that facilitate the name-check. The State Department and DHS have asked Congress to waive this requirement for another two years. This is too long a period of time to wait. I believe that, due to logistical and work load considerations, it is justified and practical to give these countries one more year to comply, but if we wait more than that, we send the signal that we are in no hurry to secure our borders. It is important to remember that these countries benefit from their membership in the program, and that they have some incentive to maintain high standards so that their citizens are not viewed as potential threats.

The requirement that countries be moving toward a machine-readable passport has been in existence since 1990, more than 10 years ago, and a “firm” deadline was set in 2000 (for October 1, 2007), but most countries made little progress in improving their documents until the current deadline was set in the USAPATRIOT Act after 9/11. Without a similarly accelerated time frame for the biometric requirement, we are unlikely to see progress anytime soon. Secretary of State Powell has testified that the two largest VWP countries, Japan and the United Kingdom, should be on board in 2005.<sup>4</sup> Visitors from those two countries make up more than half of the VWP admissions. Therefore, even if Japan and the U.K. are the only two countries able to meet the deadline in one year, the increase in workload becomes reasonably manageable.

*Expand Immigration Security Initiative to Visa Waiver Countries.* One solution to the problem of having the first screening of the VWP travelers take place at a U.S. port of entry is to deploy immigration inspectors to airports overseas. DHS has launched a pilot program in Warsaw to test this idea, known as the Immigration Security Initiative, and it is based on a similar program run by the INS. This idea is consistent with the idea of “moving our border out,” and should be supported by Congress. If VWP visitors are a concern, the program could be focused on airports in those countries. Their cooperation in the initiative could become a condition of their VWP participation.

*Interior Enforcement Needed.* The fact remains that until someone invents a machine that can read a person’s mind, there is only so much screening for terrorists that can be done at the port of entry, even with the most sophisticated technology and the most alert personnel, without inhibiting the free flow of people that keep our economy and society alive. More muscular interior enforcement to back up the visa and border screening process is a necessary ingredient in the layered defense. We know there will be mistakes; in fact, we already have more than two million of them living here, according to the most recent estimates from DHS on overstayers<sup>5</sup>. An effective program of interior enforcement would include: workplace enforcement, including an employment eligibility verification system; participation from state and local government and law enforcement; and penalties for overstaying or otherwise violating the terms of entry. The point of US-VISIT is not simply to count overstayers, but to facilitate their removal, and DHS must be held to this goal.

*Positive Feature of VWP: Streamlined Removal of Unqualified Travelers.* There is one last aspect of the VWP that is worth mentioning, not as a weakness but as a feature that may be worth replicating in other visa programs. In exchange for the privilege of applying for admission without having to get a visa, the VWP traveler signs a special form at the time of entry, known as the I-94W. By signing the visitor agrees that, if refused entry or deported, he waives any right of appeal or review of that refusal. If refused entry, the traveler is not barred from future travel, but must apply for a visa. VWP visitors caught overstaying or otherwise violating status have no right to appeal their deportation, which keeps them out of our already-clogged immigration courts.

According to immigration officers in the field, the I-94W agreement is enormously helpful in streamlining the processing of unqualified applicants, and “saves a lot of time and trees,” in the words of one official. Non-VWP travelers who are refused entry must complete a withdrawal of the application for admission or undergo expedited removal, both of which are more complicated procedures. One POE inspector only half-jokingly expressed his wish that we would offer the VWP to countries like

<sup>4</sup>Testimony of Colin L. Powell before the House Judiciary Committee, April 21, 2004.

<sup>5</sup>U.S. Immigration and Naturalization Service, “Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990–2000,” January, 2003.

Poland, which has many unqualified applicants and overstays, so that the port of entry can more efficiently deal with the volume of unqualified arrivals.

Lawmakers should consider adding this provision to other trusted traveler programs, such as the laser visa (border crossing card) for Mexicans.

*In Sum:* As long as the Visa Waiver Program is well-managed, appropriately selective in membership, responsive to security-related developments, and backed up by interior enforcement, it should not make us much more vulnerable to terrorism or illegal immigration in general. These conditions are not currently in place, but can be achieved promptly without undue strain on the Department of Homeland Security. While it might be appropriate to reduce the number of countries in the program or to impose stricter conditions on those countries, at this time it would be counter-productive to end it entirely. It is a better use of State Department resources to work with other countries on complying with our standards and learning more exactly which visitors should be scrutinized, than to have to begin processing large volumes of low-risk travelers.

Mr. TANCREDO [presiding]. Mr. Wolff.

**STATEMENT OF BRUCE WOLFF, EXECUTIVE VICE PRESIDENT,  
SALES AND MARKETING PROGRAMS, MARRIOTT INTER-  
NATIONAL, REPRESENTING TRAVEL INDUSTRY ASSOCIA-  
TION OF AMERICA**

Mr. WOLFF. Thank you. Mr. Chairman, Ranking Member Sherman, I appreciate the opportunity to testify before you this morning. It is a privilege and an honor to participate in our democratic process at this level. Protecting the homeland and providing an economic environment of security are two of the most important elements of any government.

The visa waiver system is central to both issues. I will briefly summarize our written testimony and I look forward to probing questions and thoughtful dialogue on this subject.

To help frame the questions, as mentioned earlier, I am the National Chair of Travel Industry Association of America, an organization that represents the \$500 billion U.S. travel industry, an industry that is the number one, two, or three employer in 29 States and the District of Columbia.

An industry that pays over approximately \$100 billion in State, local, and Federal taxes, and an industry that thereby allows each American household to pay about \$880 less in taxes.

We are convinced that the visa waiver program is critical to the long term economic and political health of our Nation. We believe that Congress was right and wise when it created the visa waiver pilot program in 1986 to encourage international travel to the United States, and to improve foreign relations, and to focus our limited resources on screening visitors from higher risk nations.

Visa waiver travel is one of the few enticements we can offer international visitors. There is fierce global competition going on now for international tourist dollars. The one non-combatant in that battle in the United States Government, who is alone in deciding not to fund any programs to promote visitation to our country.

Increasing visa hassles will only serve to exacerbate a decade long decline in the global market share of international tourists, one that is costing us billions of dollars and hundreds of thousands of jobs.

Essentially these tourist jobs are being outsourced to countries that better understand the economic impact of international travelers. We believe that the 2002 General Accounting Office Report was correct when it concluded that eliminating the visa waiver pro-

gram will provide unclear benefits as it relates to security, but it was clear that eliminating the program would negatively impact the U.S. foreign relations and impede tourism to the United States.

We endorse the U.S. Department of Commerce's 2002 study that concluded that ending the visa waiver program would conservatively cost the U.S. economy \$28 billion, and approximately a half-a-million U.S. jobs.

We believe that Congress is wise in enhancing the visa waiver program, adding machine readable passport requirements, and enrolling visa waiver travel in US-VISIT programs are examples of Congress lead enhancements that serve to add levels of security to the VWP.

We support the requirement of biometric identification to passports, but understand the October deadline cannot be met by visa waiver countries or for that matter by the United States. We need to extend that date promptly to prevent continued loss of sales.

And in fact I would love to enter into a larger discussion about whether 1 year or 2 years is appropriate during the questioning time.

Finally, and of greatest importance, we remain convinced that engagement with the world, and not isolation from it, will ultimately make our Nation more secure. When we foster travel to the United States, we help the world better understand America and our cherished values of freedom, democracy, and equality.

In the long run, vibrant global tourism to and from the United States will do more to accomplish security for our country than we will ever accomplish by force. We are the light at the top of the hill, and we should not put a wall around that light.

In summary, we believe that the visa waiver program enhances our economic well being and our national security. The United States Congress should continue to look for ways to strengthen and extend the program. Thank you for the opportunity to appear before you today.

[The prepared statement of Mr. Wolff follows:]

PREPARED STATEMENT OF BRUCE WOLFF, EXECUTIVE VICE PRESIDENT, SALES AND MARKETING PROGRAMS, MARRIOTT INTERNATIONAL, REPRESENTING TRAVEL INDUSTRY ASSOCIATION OF AMERICA

Mr. Chairman, Ranking Member Sherman, and Members of the Subcommittee, I appreciate the opportunity to testify before you this morning concerning the Visa Waiver Program. In addition to my role as Executive Vice President, Sales and Marketing for Marriott International, I am also currently national chair of the Travel Industry Association of America, or TIA. TIA is the national, non-profit organization that represents all segments of the \$585 billion U.S. travel industry. TIA's mission is to promote and facilitate increased travel to and within the United States.

Beyond my roles with Marriott International and TIA, I appear here today also as a concerned American citizen; intensely interested in examining and discussing ways to make this country safe and secure without diminishing what makes us uniquely American—our openness to cultures and peoples from all over the world.

Promoting international travel to the United States is an important part of the mission at TIA, and the Visa Waiver Program is critical to the long-term health of the U.S. travel and tourism industry. We believe this is an important opportunity to review why Congress was right to create the program over 15 years ago, and explain how the program remains both relevant and essential for the travel industry and the nation as a whole.

The U.S. Congress created what was then known as the Visa Waiver Pilot Program in 1986, and enrolled its first countries (the United Kingdom and Japan) two years later. Congress wisely chose to create the program as a means to encourage international visitors to travel to the U.S., permit the federal government to focus

its limited resources on more intensely screening prospective visitors from higher-risk nations, and to improve U.S. foreign relations. The Visa Waiver Program is one of the few enticements we can offer international visitors, especially in the current absence of any national effort to promote visitation to our country. The program also serves as a tangible demonstration to overseas visitors that the American 'welcome mat' has indeed not been pulled—an especially important matter in a post-9/11 world where our nation is often not viewed as friendly and hospitable.

A small number of people in and out of Congress have suggested suspending or terminating the Visa Waiver Program in the false hope that it will make us a safer nation. We are certain such a course of action, as well intended as it may be, would be economically ruinous for our nation and would do little, if anything, to improve homeland security. According to the November 2002 GAO Report entitled, "*Implications of Eliminating the Visa Waiver Program*," the national security benefits of such an action remain "unclear." What is clear, according to this report, is that "eliminating the program could negatively affect U.S. relations with participating country governments, impede tourism to the United States, and increase the need for State [Department] personnel and facilities overseas." (*GAO-03-38 Visa Waiver Program*, p. 16)

Congress should not underestimate the burden visa adjudication and processing places on travelers. Faced with the choice of paying a \$100 (U.S.) application fee per person, filling out forms and waiting sometimes weeks or even months for an in-person interview, millions of travelers would certainly choose to travel to other competing destinations, most of which do not require visas.

According to a study commissioned by the U.S. Department of Commerce in 2002, discontinuing the Visa Waiver Program would cost the U.S. economy \$28 billion in visitor spending over a five-year period and result in almost half a million lost jobs. Travelers from the 27 Visa Waiver Program countries have choices in terms of destinations, and reestablishing a visa requirement would cause a number of them to vote with their feet and wallets to choose other destinations that are visa-free.

And there are more than dollars and jobs at stake as well, since U.S. officials are cited in the GAO study as saying that "eliminating the Visa Waiver Program could have negative implications for U.S. relations with governments of participating countries and could impair their cooperation in efforts to combat terrorism." Nations like the United Kingdom, Japan and Australia are our closest allies in the war on terror. As the GAO Report states, "Participating countries may see their loss of visa waiver status as a sign that the United States views them as untrustworthy—more as security risks than as allies." (*GAO-03-38 Visa Waiver Program*, pp. 19-20)

TIA and the U.S. travel industry are grateful that Congress and the Administration have, over the past several years, significantly enhanced the program through important new statutory requirements. In 2000, Congress acted to permanently reauthorize the Visa Waiver Program, and TIA was the lead private sector organization working to support that important step. The 2000 Visa Waiver Permanent Program Act also made a number of important changes to strengthen an already solid program, including: regular review of VWP countries to determine their fitness to continue in the program; new government powers to remove countries from the program for emergency reasons; and requirement of newer, machine-readable passports (MRP's) by a date certain, which will serve to improve inspections and enhance security as U.S. ports-of-entry.

The regular review of participating countries already led to the removal of Uruguay in March of 2003, and the enhanced emergency powers were exercised in early 2002 with the suspension of Argentina from the program due to that country's deepening economic and political difficulties. Finally, the machine-readable passport requirement will begin October 26, 2004.

The Enhanced Border Security and Visa Entry Reform Act of 2002 also created new tools to strengthen the Visa Waiver Program, including new powers to force VWP countries to share lost and stolen passport information in a more timely fashion. It required that Visa Waiver Program countries be reviewed not less than every two years, when it had previously been not less than every five years. Finally, this act imposed a requirement that VWP countries begin issuing machine-readable, tamper-resistant passports with a biometric identifier not later than October 26, 2004. The latter has been the subject of congressional oversight hearings in 2004, and legislation extending this deadline by one year is scheduled to be voted on by the House of Representatives by the time of this hearing on June 16.

In addition to these statutory enhancements to the VWP, the Department of Homeland Security (DHS) operates other programs that add to the security of Visa Waiver. The current practice of collecting advanced passenger information on international travelers entering the U.S. through airports and seaports permits DHS to pre-screen visitors prior to their arrival at a U.S. port-of-entry. And last, but poten-

tially most important, beginning no later than September 30, 2004, all Visa Waiver Program travelers will begin to be enrolled in the US-VISIT (U.S. Visitor and Immigrant Status Indicator Technology) Program upon arrival in the U.S. This program captures and compares biometric information of travelers to confirm their identity and screen for criminals or known terrorists. DHS is also considering the posting of inspectors overseas through the Immigration Security Initiative, thereby allowing the U.S. to pre-screen international travelers bound for the U.S. before they even board an airplane.

TIA believes it is important that Members of Congress understand all that has taken place since 2000 to make the Visa Waiver Program more secure. While we hear from some quarters about the alleged vulnerabilities of the program, not enough has been said about all the actions that have been taken to improve the VWP. Acts of Congress, administrative decisions by the White House and specific programs and strategies by federal agencies now provide a 'layered approach' that makes the VWP less susceptible to abuse by those would seek to do this nation harm.

There is no way to completely eliminate all risks associated with the entry of foreign nationals into the U.S. as leisure visitors, business travelers or any other category of activity. Part of the price we will continue to pay as nation that wishes to remain a free and open society is that we will have to tolerate some level of risk in order to be a full participant in a larger global society and economy. As outlined in the previous paragraphs, changes and improvements can and should be made to mitigate that risk. The Visa Waiver Program is simply one important tool in the overall effort of homeland security risk management.

There is no industry more interested in working to prevent a repeat of the tragic events of September 11, 2001. The U.S. travel industry lost valued employees that day, and saw tens of billions of dollars of spending vanish overnight. Some businesses went bankrupt and 350,000 tourism-related jobs were lost in the aftermath of those horrible actions.

Protecting the homeland from further attacks remains one of the government's most important functions, and TIA and the U.S. travel industry continue to cooperate with all branches of government to do our part in this effort. Homeland security is, indeed, everyone's business.

Yet, there must be way to protect this nation while continuing to welcome all international visitors. We are heartened by the Administration's recent pronouncements that they now realize there must be some 'adjustment to the adjustments' concerning border security and new requirements that only serve as a disincentive for international visitors.

Any movement in the direction of further closing our borders and isolating the U.S. from the rest of world would create greater risk and not maker our nation safer. This would only serve to transform the perception of 'Fortress America' into reality. Such a restrictive security atmosphere would jeopardize our ties with key nations and create severe economic hardships for thousands of American workers. For these reasons, we must continue to seek greater homeland security and improved economic security, all the while continuing to engage in the world marketplace of commerce, ideas and cultural exchange.

Membership in the Visa Waiver Program is a privilege and not a right, but it is an important privilege for these 27 nations and it permits us to continue welcoming business and leisure travelers from most of our top inbound markets. It also fosters goodwill with those nations, and helps millions of people from around the world experience the best of American history, culture and our values—one of the most effective means of winning 'hearts and minds' at this critical juncture in our history. What America needs then are more international visitors, not fewer.

Now, we would be remiss if we did not acknowledge the recent critical report by the Department of Homeland Security's Office of Inspector General concerning management and oversight of the Visa Waiver Program by DHS. The way to enhance our nation's security without ruining our international tourism economy is to ensure that Homeland Security is utilizing all the important tools provided by Congress. Based upon meetings and conversations with Homeland Security officials, we are confident they are prepared to respond appropriately to all of the concerns raised in the OIG report.

In closing, the U.S. travel industry will continue to do all it can to promote the United States as the leading travel destination in the world. All we ask of the federal government is that it does its part to help facilitate international travel to this country. Through programs such as Visa Waiver the federal government and the private sector can work together to make this nation more secure and more accessible to international visitors at the same time. The VWP is a win-win partnership

between government and the travel industry and is deserving of the continued support of the U.S. Congress.

Thank you for the opportunity to appear before you today. I look forward to answering any questions you might have.

Mr. TANCREDO. Thank you, Mr. Wolff. Mr. Leiken.

**STATEMENT OF ROBERT LEIKEN, DIRECTOR OF THE IMMIGRATION AND NATIONAL SECURITY PROGRAM, THE NIXON CENTER**

Mr. LEIKEN. I have longer remarks which I would like to enter into the record later, and they will be over on the table. I think that everyone on the panel agrees that we need to mend and not end the visa waiver program to coin a phrase, but the conversation in the first panel makes me think that we need to review a little bit the world in which visa waiver was created.

It was when we thought that Europe was basically a zone of peace, the third-world was a zone of conflict. Now we have to understand that Europe has become a zone of conflict.

The previous assumptions ignore I think the entrance of militant Muslims into Europe, the growth of militancy amount second generation Muslim immigrants, people who are eligible for passports who are already citizens.

And it ignores the new al-Qaeda and its recruitment strategy, which focuses on Europe, and they are basically several steps ahead of us on the basis on the kinds of questions that we are looking at today.

Al-Qaeda is no longer a bureaucracy, but a loose collection of networks. To this movement, Osama bin Laden offers ideological and strategic orientation rather than operational assistance.

Networks tied to al-Qaeda solely by world view coalesce for a specific mission, only to disappear or transmute into other lethal groups. But Madrid proved that even without a safehaven or safe sponsor, this movement can deal strategic blows.

Madrid also spotlighted the renaissance of Islamic terrorist cells in Europe after the United States invasion of Iraq. In Spain alone there were 10 groups which took inspiration from Osama bin Laden, but the Madrid operatives also received illumination, advice, and assistance from imams and colleagues in Britain, Denmark, France, Germany, Italy, and Norway, as well as Morocco.

Rabei Osman Sayed Ahmed, the suspected ringleader of the Madrid bombings, was arrested last week in Milan after police bugged his residence, and he was heard saying that he had worked on the Madrid operation for 2½ years, and also was overheard to say that European al-Qaeda was:

“ . . . in all locations, in Germany, Holland, London. We are dominating Europe with our presence.”

Osama bin Laden and a score of foreign imams, usually Middle Eastern, now provide encouragement and strategic orientation to scores of independent European Jihadi groups. If this were not disturbing enough, 3/11 raises the spectra of another 9/11, once again with a European address.

European nationals under our visa waiver program can enter the United States with no visa or interview by an American official. U.S. and foreign intelligence services concur that the clearest

threat to the United States comes not from sleeper cells within, but from hit squads outside, especially from Europe.

And al-Qaeda 2.0 as it were specifically seeks Europeans who could pass easily into the United States. They are converting European converts who look just like us. The Deputy Director of the French National Surveillance Directorate told me in April 2003 that converts are our most critical work now. At the Nixon Center, we did an analysis which is on-line at [Nixoncenter.org](http://Nixoncenter.org), where we did a matrix of suspected and convicted terrorists in North America and Europe since 1993. Nearly 10 percent of them were converts to Islam.

Other new recruits have the same purpose. Alienated young Muslim European nationals who carry passports and know the west. And 10 percent of the 20 percent of our sample of Europeans was composed by second generation immigrants.

They also recruit so-called lilly whites, European Muslims with clean records, and they are focusing on recruiting women. They are encouraged to travel in families, in contrast to profiles based on young male Arab Muslims.

They are targeting the United States. Rabei Osman Sayed Admed, the Madrid ringleader, was taped boasting that plans were underway for some kind of chemical attack against American interests.

He lamented that a female operative involved in the project had been discovered, but he added that there are other women. Among them is one who has been, "prepared with many mediational products," he said. If they toss a stick, they destroy an entire American neighborhood.

One named Amal who he said was ready. These European women could enter our country without an interview, and our neighborhoods without suspicion. We saw the experience of Richard Reid, who made child's play of the visa waiver program in entering our country.

Should we then suspend the visa waiver program in certain countries? But that would put homeland security at odds with foreign policy, and such a step would not only harm business and travel, but further antagonize the European public.

The State Department is already strained to enforce more stringiest visa security. Moreover, there are comparatively low rates of visa abuse in European visa waiver countries. And we have heard all of the arguments as to how much it would cost.

Thus, we cannot simply end the visa waiver program. We must mend it. Currently two measures are trumpeted to deal with the visa waiver loopholes; the entry exit system, and the advanced passenger information system, which provides the Homeland Security Department with information on passengers bound for the United States.

But DHS receives this information 15 minutes after the plane takes off. From neither entry/exit nor APIS would stop a terrorist from hijacking one of more than 200 daily flights from Europe and diving into an American city.

Upon arrival an entry inspector has less than a minute to check a doubtful entrance into the new entry exit system. But before

granting a visa, U.S. consulates get 2 weeks to run a background check test.

And to require interviews, and we have seen how important an interview can be in stopping Ahmed Ressay, the Millennium bomber, and in stopping the 20th hijacker in Orlando.

A quick fix would be to place unarmed DHS officers at check-in counters for United States bound flights at European airports, such as the pilot program that we are trying out in Holland.

Passengers would have to complete check-ins on European bound flights at least an hour before the wheel drop. That would give DHS time to run names through the National Targeting Center, and through the Terrorist Screening Center.

This procedure would benefit from the recently signed agreement between the United States and the European Union legalizing the transfer of advanced passenger name record data, along with other passenger, cargo, and threat intelligence to DHS.

Finally, I would like to say in terms of a review and reevaluation of the visa waiver countries, we need to take into account the situation on the ground. We need an intelligence report to tell us what is the danger of Muslim terrorism in that particular country, and what are the counter-terrorist measures being taken. Thanks.

[The prepared statement of Mr. Leiken follows:]

PREPARED STATEMENT OF ROBERT LEIKEN, DIRECTOR OF THE IMMIGRATION AND NATIONAL SECURITY PROGRAM, THE NIXON CENTER

EXECUTIVE SUMMARY:

The most immediate terrorist threat to the United States stems not from the Middle East but from Western Europe. Passport eligible Muslim European nationals furnish al Qaeda and related jihadi recruiters with a choice cache of potential operatives. This has direct national security implications for the United States because European nationals are eligible to enter the United States without so much as an interview by an American official.

We know jihadi organizations recruit European Muslims, who can evade suspicion which would be directed at individuals of Middle Eastern appearance. From Europe, these terrorists can take advantage of the Visa Waiver Program (VWP), which allows citizens of 27 nations (mostly Western European) the right to travel to the United States without a visa and thus without an interview by a US official.

Al Qaeda et al. will continue to recruit bearers of European passports. America must adapt to this strategy without curtailing business and tourist travel. My policy recommendations obey a national security imperative—to prevent terrorists from hijacking U.S.-bound airplanes or entering the United States—while actually facilitating travel, cultural exchange and commerce.

The ongoing jihad recruitment of European Muslims and the ease at which they can currently enter the United States raises the possibility that, like most of the 9-11 pilots, the perpetrators of a new attack will come from Europe. To protect this nation it is therefore absolutely necessary that the American government mend the Visa Waiver Program and bring visa issuance into the information revolution.

AL QAEDA AND ZARQAWI IN EUROPE

Since September 11 Islamic terrorists have rebuilt and even extended their European operations despite Western police efforts. That is the conclusion drawn by senior counterintelligence officials and other sources. Terrorist operations and cells have spread eastward from Western into Eastern Europe.

The terrorist attack in Madrid marked the emergence of al Qaeda as a geopolitical actor. 3-11 demonstrated that al Qaeda has the ability not only to topple a Western government but also to disrupt the Western coalition, targeting and then peeling off a U.S. ally. In Europe al Qaeda's ten-strike isolated our best ally Tony Blair, left the so-called "New Europe" a relic and widened the gap in the Atlantic Alliance. But of more urgent concern, "Al Qaeda 2.0" has opened a new military front in Europe, morphing into a hydra-headed host in Western dress. And thanks to our outmoded

immigration system, those European holy warriors represent a direct threat to America as well as to our European allies.

What has emerged is not so much a second version of the old al Qaeda but a new adversary. The Western counter-offensive after 9–11 decimated al Qaeda's leadership, stripped the organization of safe havens and training camps and disrupted its command and control. Al Qaeda the vanguard was dispersed only to sprout like proverbial dragon's teeth into a worldwide movement. To this movement Osama bin Laden offers ideological and strategic orientation but not, as in the past, logistic or tactical assistance. Former al Qaeda subsidiaries are now franchises under the al Qaeda brand name, receiving inspiration from bin Laden's occasional messages but operating independently. Networks tied to al Qaeda only by worldview coalesce for a specific mission only to disappear or transmute into other lethal groups. But Madrid proved that even without a safe haven this movement can play on the geostrategic chessboard.

Al Qaeda now spans Europe. In Spain alone there are ten groups which take inspiration from Osama bin Laden. But 3–11 operatives also received illumination, advice and assistance from imams and colleagues in Britain, Denmark, France, Germany, Italy and Norway as well as Morocco. Bin Laden now provides encouragement and strategic orientation to scores of independent European *jihadi* groups which assemble for specific missions, drawing operatives from a pool of professionals and apprentices, and then dissolve.

If this were not disturbing enough, 3–11 raises the specter of another 9–11, once again springing from Europe. European nationals, under our Visa Waiver Program (VWP), can enter the United States without so much as an interview by an American official. And of course, we are approaching an election season ourselves.

We have almost forgotten that 9–11 was led by the infamous "Hamburg cell." 3–11 spotlights the renaissance of Islamist terrorist cells in Europe after the U.S. invasion of Iraq. European Sunni terrorist networks are now under the influence of the newly notorious Abu Musab al-Zarqawi, the same terrorist who sawed off the head of Nick Berg and who bombed a throng of Shi'ite worshippers in Iraq last March in an attempt to generate sectarian war. European intelligence services say Zarqawi's network sends suicide bombers to Iraq and seeds bombs squads in Europe. Spanish and French investigators claim Zarqawi was "the brains" behind Madrid. Spain itself has long served as a rest and rehabilitation area as well as a financial, logistical and recruitment hub for al Qaeda's European networks which draw on the country's proximity to North Africa and a steady flow of immigrants from Morocco. Of course, 3–11 showed Spain has also become a terrorist target. Additional operations were aborted when six terrorists, surrounded by police, blew themselves up in a safehouse in a Madrid immigrant community.

The likeness of 3–11 to 9–11 would have been jarringly closer had the terrorists succeeded in what Spanish investigators concluded was their real goal: blowing up the whole central train station, producing not hundreds but thousands of deaths. Like 9–11 the Madrid operation was carried out by a combination of a hit squad and a sleeper cell. Sleeper cells are lodged in the immigrant community inside the country, like the Moroccans in Spain. Hit squads deploy aliens, assembled overseas, who enter the country with a specific mission. September 11th was the work of a hit squad skippered by a European sleeper cell, the Hamburg cell. The Madrid hit squad enlisted veterans of last May's Casablanca bombings who arrived days before 3–11 to join with sleepers from Morocco, Tunisia, and Syria—immigrants all, some traveling with phony papers.

#### EUROPE'S SINGULAR IMMIGRATION PROBLEM

At first glance both the United States and Western Europe appear to face much the same immigration predicament. Both have been the recipient of continuous mass immigration from developing countries for two generations. Yet in Europe immigration represents a pressing national security issue, in large part due to the *provenance* of Europe's problematic newcomers. For two generations adjacent ex-colonial regions have been sending migrants to the West. But in the European case those neighboring undeveloped countries are most often Muslim. A senior Moroccan official says "every country with an Arab or Muslim immigrant population now faces the problem of sleeper cells." On the other hand the United States is bounded by Latin America, the one major region without a broad Muslim presence. America's "problem" immigrants are mainly Latinos who actually present high rates of military enlistment and other indices of identification with the host country. America's immigration problem is not one of loyalty.

Unlike their American counterparts European Muslims tend to be indigent and to dwell in enclaves. These conditions reflect their varying circumstances of migra-

tion. European Muslim immigration derives from guest worker programs designed to fill factory jobs in the post-war “miracle” era. Those poorly educated workers hailed from rural backgrounds much like the Mexicans who continue to arrive in the United States. Reunited with their families in the 1970s, European Muslims typically live in *banlieues* (outer “inner cities”). But American Muslims started coming as students and likewise carry the stamp of their arrival, tending to be educated professionals, noticeably more successful than their European counterparts.

Though the U.S. census does not chart Muslims, most demographers believe that the U.S. Muslims do not exceed 3 million, less than 2 percent of the population. In France that cohort reaches as high as 7–10 percent (news reports say 5–7 million Muslims reside in France), the Netherlands 4.4 percent, Germany 3.7 percent and Belgium 3.7 percent. The U.K. total is 2.7 percent or about 2 million, but radical fundamentalism prevails in many British mosques and communities.<sup>1</sup> Muslims form the majority of immigrants in most Western European countries or the largest single component as in Britain. Moreover, while America’s Muslims are geographically dispersed and ethnically fragmented, European Muslims tend to congregate in national blocs.

It hardly needs to be said that most immigrants have nothing to do with terrorism and are more likely to be its victims than its perpetrators. Half of those murdered in Madrid were aliens, of which half were undocumented. But if most immigrants are not terrorists; most terrorists are immigrants. As Rohan Gunaratna, a leading authority on Islamic terrorism has stated: “Every major terrorist act in the West in the past decade, with the exception of Oklahoma City, utilized immigrants or immigrant communities.” Now we can add Madrid to that inventory.

A Nixon Center survey of 279 jihadis found that many second-generation European Muslim immigrants (most of them citizens) were picked up in the aftermath of 9–11. 249 of the 279, or 89%, were immigrants. Of the 249 immigrants, 29, or nearly 12% are second generation. 144 of the 279 were hosted in European nations. 19% (53/279) of the subjects in our chart are European nationals and eligible for the Visa Waiver Program.

Muslim immigrant communities in Belgium, France, Italy, Spain and the Netherlands as well as in England have been identified as recruiting grounds for Muslim terrorists. In France, alienated, unemployed, unassimilated Muslim immigrants indulge in gang rapes, anti-Semitic attacks and anti-American violence. French counter-terrorism officials told me that al Qaeda recruitment efforts are directed at these targets. The officials showed me an intelligence report on jihad recruitment stating that for “a minority” of French youth radical Islamism “represents a vehicle of protest against . . . problems of access to employment and housing, discrimination of various sorts, the very negative image of Islam in public opinion.”<sup>2</sup> An earlier *New York Times* report found: “Western Europe is home to about 15 million Muslim immigrants and while a vast majority are peaceful citizens opposed to terrorism, their presence provides a recruiting ground and a cover for sleeper cells.”<sup>3</sup> We all need to face up to the fact that al Qaeda is and has been deploying migration as a weapon in an asymmetric war.

#### AL QAEDA 2.0 OR AL QAEDISM

Thus it was no geographical fluke that the sleeper cell forming the cockpit of the September 11 hit squad came from Europe. Should there be another 9–11, 3–11 underscores the chances it will come from Western Europe. And the al Qaeda threat has widened since 9–11. At that time al Qaeda was a triple tiered pyramid with a small core of veterans at the apex, a federation of terrorist networks in the center, and a pool of militants trained in Afghan camps at the base. To some extent it was a bureaucratic organization that demanded that requisition for equipment (like CDs and tires) be submitted in triplicate.

The U.S. counter-offensive breached that pyramidal structure but it extended Osama Bin Laden’s ideological reach, in part thanks to the war in Iraq (whatever

<sup>1</sup> For approximate percentages of population see *The World Factbook*, (Washington, D.C.: Central Intelligence Agency), 2003. (Field Listings: Religion) available online at <http://www.cia.gov/cia/publications/factbook/fields/2122.html>, accessed February 10 2004. Reliable counts of Muslim population are rarely possible. For example religious allegiance cannot be registered in French census data or government documents. Accurate sampling is further frustrated by the fact that national origin, frequently employed to determine the extent of Muslim immigration, cannot account for the degree of Islamic observance among those sociologically identified as Muslim. German figures are more accurate.

<sup>2</sup>[2] *Processus d’Enrôlement de Jeunes Musulmans dans le Jihad*, (Paris: DST), spring 2003.

<sup>3</sup>[3] James Risen And David Johnston, “Split at CIA and FBI on Iraqi Ties to Al Qaeda,” *The New York Times*, February 2 2003.

its compensating merits). Al Qaeda now plays a different role in international terrorism: from a center of operations it has become a source of inspiration. After September 11 and Iraq “al Qaedaism” spread to millions and deepened its roots in scores of countries. Muslim resentment is now voiced through the rallying cries of Abu Musab al-Zarqawi and Ayman al-Zawahiri as well as Osama bin Laden as opposed to non-violent political Islamists. The language of these ideologues has become a global tongue of revolt. Interest in Islamism has become “an autonomous phenomenon” in the Netherlands, meaning that even without any external influencing or incentive some people are embracing the radical fundamentalist line of thinking. It has become “part of the youth culture” and the same may be said for Muslim communities in Belgium, Britain, France and Spain.<sup>4</sup>

Al Qaeda supplies an ideological framework, stirring “freelance” operatives to wage jihad against the West. Dozens of Islamist terrorist groups conduct attacks with minimal, if any, tactical guidance or logistical support from al Qaeda. Al Qaeda materials are emailed to would-be jihadists, downloaded from the Internet, transferred to CD-ROMs. Al Qaeda has undergone a Reformation; the high priest no longer manages the flock. The congregation is guided by the Word.

European jihad operations extend from Spain, France, Britain and Italy to Austria and Germany and into the Balkans. A top German security official describes the groups involved as “mostly non-aligned,” working together on an *ad hoc* basis for specific operations and taking inspiration but not direction from al Qaeda—that is to say, they are part of al Qaeda 2.0. As late as May 10, 2004 the *New York Times* reported that activity by Islamic terrorist networks in Europe “has increased, spreading anxiety that another attack on a European Union member is in the works.”<sup>5</sup>

Europe has two sorts of candidate Muslim terrorists: “outsiders” and “insiders.” Outsiders are the aliens, the foreign dissidents, typically students or asylum seekers, some of whom have sought refuge from anti-Islamic crackdowns in the Middle East. Insiders are converts as well as citizens from the downwardly mobile second generation, often victims of discrimination in Europe.

#### EUROPE’S RESPONSE

The European reaction has been desultory. Though several Western European countries passed security measures similar to the U.S. Patriot Act, the impact in Europe of 9–11 was less profound and durable than on this side of the Atlantic, for reasons both readily understandable and deeply discomfiting. September 11 did not happen to Europe and before that day Western European countries had grown used to terrorism, albeit of a different nature. The IRA, ETA, the Red Army Faction and the Bader Meinhoff Gang never produced anything like the spectacular mass terror of September 11. Before 3–11, when Europeans thought of terrorism what came to mind were car bombs or booby-trapped trash cans. Moreover, some Europeans firmly believed that their more accommodating Middle East policies would protect them from jihad. The attacks against Spain and Turkey, the threats against Britain and Italy, all American allies in Iraq, confirm those beliefs, as bin Laden knows.

The European reaction to 3–11 deepened the terror fissure that opened after 9–11. The countries previously seized with the matter, such as Britain, France and Spain, pressed for a common European response. Finally that amounted to nothing more than the appointment of a minor official to coordinate European counter-terrorist statutes and to try to harmonize E.U. security arrangements. But serving as a broker between Brussels and 25 sovereign member states will not be easy because their legal codes differ drastically. In Belgium, for example, it is virtually impossible to tap phones of suspected terrorists or sympathizers even though jihad organizations sought in France operate from its northern neighbor. Otherwise the European leaders, as one British official told me, “agreed to do all the things they said they’d do after 9–11 and didn’t.”

The State Department’s Coordinator for Counter-Terrorism told a Senate Foreign Relations panel in March that “Some European states have demonstrated a troubling inability to prosecute successfully or hold many of the terrorists brought before their courts.” Strict financial privacy laws constrain German and Swedish authorities from tracking terrorist money. On January 1, 2004 an EU-wide arrest warrant was supposed to take effect to allow police to avoid lengthy extradition proceedings.

<sup>4</sup>AIVD, “Background of jihad recruits in the Netherlands,” March 10, 2004; [http://www.aivd.nl/actueel\\_publicaties/parlementaire/background\\_of\\_jihad](http://www.aivd.nl/actueel_publicaties/parlementaire/background_of_jihad)—accessed June 12, 2004

<sup>5</sup>Craig S. Smith, “Europe’s Chief on Terrorism to Reassure U.S. on Efforts,” NYT, May 10, 2004

But parliaments in Germany, Italy, Greece, Austria, and the Netherlands have failed to authorize the European warrant.

Thus not much has changed since European countries decided at Maastricht in 1993 that counter-terrorism, like immigration, was a matter for the “third pillar” or “Justice and Home Affairs.” That means cooperation requires an unlikely consensus. Europeans properly think both immigration and homeland security dwell at the seat of sovereignty. Thus the nation-state remains where the action is.

That is why the United States reluctantly chooses to work bi-laterally with individual European states on counter-terrorism and encounters wide differences in collaboration. Americans who regard the invasion of Iraq as a strategic strike in the war on terrorism are shocked to learn it is the French, and not the British, who are most helpful in combating al Qaeda. The reason is simple. Previous to 3–11, France was the only E.U. country facing a major Islamist terrorist campaign. If Irish terrorism diverted British attention away from jihadis, Algerian terrorism had precisely the opposite effect in France.

Before 3–11 European politicians tended to minimize the jihad danger. America experienced frequent government-induced alarms while European alarms generally were shared only with security forces. But the views of European security services and interior ministries were always more consistent with the “American” conception of the threat. Moreover 3–11 helped some Western European politicians understand our alarm. Berlin for one was startled to discover a fresh German immigrant connection to terror. Interior Minister Otto Schily, a former Green Party pacifist, now the tiger in the Social Democratic government, has called for quicker German action to expel foreign terror suspects as well as European-wide computer aided information sharing (he calls it “profiling”).

Britain’s recent arrest of Abu Hamza al-Masri, the former imam of the Finsbury Park mosque in London, is part of a blossoming European effort to restrain foreign radical imams. Having secured entrance to an individual European country, under the Schengen treaty which ended internal borders, these preachers, often financed by Saudi oil money, crisscross Europe. They proselytize and spread messages from bin Laden while forming networks for a new breed of terrorist such as Zarqawi. Recruiters for holy war fish in a European pond stocked with unemployed and alienated second generation Muslim immigrants. In France, the jobless rate for immigrant men is 20 percent compared with about 9 percent for the native-born population. In Germany, the rate is 15 percent for immigrants compared with 7 percent for native-born Germans. In Britain, average unemployment rates hover around 2 percent, but for immigrants the unemployment rate is almost 5 percent. The unemployed remain undigested by a continent wary of immigrants. By contrast, in Australia, Canada and the United States, the jobless rates for foreigners and native born workers are virtually the same.

Some of the jobless turn to crime and land in jail where the more honorable try to turn their lives around. Not infrequently these jailhouse transformations are administered by foreign imams. A French intelligence report on jihad recruitment notes that Islamization for “a minority” of French youth “represents a vehicle of protest against . . . problems of access to employment and housing, discrimination of various sorts, the very negative image of Islam in public opinion.” A year ago the deputy director of the French interior intelligence service told me of his worries that foreign imams were radicalizing their flocks and hatching terrorist plots. The proletarian suburbs of France and Belgium host angry young Muslim militants who, when they are not staging strident anti-semitic demonstrations, mount raucous defenses of rapists as recently shown on “60 Minutes.” Add to this mix imam recruiters and al Qaeda and Zarqawi’s concerted quest for bearers of Western passports, stir with the U.S. Visa Waiver Program, and we are in a national security stew.

Spain is the port of entry of choice for North African militants and Italy’s document-forging industry makes it an ideal bridge to France and points north, but Britain remains the jihad nerve center—a logistical hub, a safe-haven, a recruiting and staging ground and a propaganda megaphone. A few radical clerics, like Abu Qatada—said to be the spiritual counselor of September 11 ringleader Mohammed Atta and al Qaeda’s “spiritual emissary to Europe”—languish in British prisons. But others like Sheik Omar al Bakri, leader of a movement called Al Muhajiroun, carry on robust propaganda campaigns. The preeminent European performer and media darling for jihad was the telegenic, one-eyed, claw-handed imam, Abu Hamza al-Masri.

Hamza’s mosque in north London’s Finsbury Park was the best-known British mosque to have been taken over by imams from South Asia and the Middle East. The mosque was the inspiration of the Prince of Wales and other British aristocrats. Two decades ago the Prince approached King Fahd of Saudi Arabia who sprang for £1.3 million to construct the four floors of prayer halls of a modern red brick struc-

ture in a largely Bangladeshi community. Conceived as a genteel, tolerant, cosmopolitan center of study, the mosque became a haven for terrorist suspects. The original trustees who attempted to resist the takeover were attacked by militant gangs who barred their entrance.

Enter Abu Hamza, who had arrived in Britain from his native Egypt to study engineering. In 1996 the former bouncer presented himself as a mediator. In return for resolving the conflict Hamza secured a letter from the trustees allowing him to preach in the mosque. Soon worshippers began noticing groups of young men staying overnight at the mosque. Many were Algerians recruited by Djamel Beghal, an Algerian computer expert whom Osama bin Laden had assigned the task of setting up cells in Europe. Like Hamza, Beghal was an engaging figure. He circulated among the drifters and asylum-seekers steered by the networks to Finsbury Park, inviting them to linger after Friday prayers and join "study groups." By the spring of 1998 Beghal had several would-be suicide bombers staying with him in the mosque. One was Richard Reid, the South London petty thief who would gain notoriety as "the shoe bomber." A second was Zacarias Moussaoui, whose brother Abu Samad blames the Finsbury Park mosque for his brother's radicalization. Other Finsbury Park terrorist all-stars included Ahmed Ressam, arrested attempting to bomb the Los Angeles airport at the Millennium; Anas al-Liby, now on the FBI's most wanted list and in whose Manchester flat police found al-Qaeda's terror manual in 1995, several of the eight Britons to be held in Guantanamo Bay, such as the computer student Feroz Abassi, first recruited for weapons training in the mosque, and Rashid Ramda, then facing extradition to France for planning and financing the bombing of the Paris metro. The United States had its own representative in Earnest James Ujaama, a Muslim convert who helped to run the mosque's website in 1999 before returning home, where he tried to set up al-Qaeda training camps in Oregon.

Questioned about these suspects, Hamza, known as "Captain Hook" in the British tabloids thanks to the steel prosthetic device on his right hand, would insist that he knew nothing of their extremist links, noting with a studied insouciance that "thousands of young people from all over the world come to hear me preach. I am very famous." Indeed, videos and tape recordings of Hamza's sermons circulated in mosques throughout Britain and beyond. The Yemeni government sent evidence saying it was from his mosque that Abu Hamza's son, his stepson and his press officer were recruited for a bombing mission in December 1998 against British targets in the port city of Aden.

Hamza's star began to fade in February 2003 when British authorities pursued a plot allegedly to poison British troops with ricin traced to camps in Kurdish sections of Northern Iraq. 150 police in rapid entry units, wearing full body armor and supported by armed officers, smashed a battering ram through the front door of the Finsbury Park mosque. The authorities found hundreds of documents used for identity forgery. Officers, having sought the advice of Muslim colleagues on "how to behave respectfully," covered their shoes, and focused their search on offices, avoiding prayer spaces. The juxtaposition of such consultations with a battering ram indicates the intricacy of Britain's Muslim predicament. In the wake of the raid the British media featured protests alleging violations of "the sanctity of a mosque to silence a preacher."

The enterprising Hamza, banned from preaching inside the Finsbury Park mosque, henceforth preached outside the building every Friday afternoon. At one such gathering, a week after the Madrid bombings, a militant with blonde brows buttonholed me, vowing another attack on the United States. The look in his eyes was dead serious.

On May 27th the British finally closed the Hamza show under U.S. prodding. On the basis of a new anti-terrorist extradition treaty signed with the United States, Scotland Yard busted the elusive imam and began extradition proceedings after an 11-count indictment was unsealed in New York. Attorney General John Ashcroft said Hamza faced charges of trying to establish a terrorist training base in Oregon in 1999, helping to recruit for al Qaeda and abetting the hostage taking of 16 tourists in Yemen in 1998 which ended in several deaths. U.S. officials voiced concern that the arrest could spark reprisals against Americans in Europe.

The Home Secretary says he has an American pledge not to seek the death penalty, a condition of extradition under British and European Union laws. The new extradition treaty sets a strict timetable for hearings and appeals so that within a year Hamza should be awaiting what promises to be the terrorist trial of the new century.

The Hamza arrest is part of a dawning European effort to restrain foreign radical imams. Calling them a public danger, France had deported more than a dozen imams in the past year and threatens to expel two more. A fifth is under arrest.

Italy deported a Senegalese imam from in November, calling him a “danger to state security.” He warned that Italian soldiers in Iraq and Afghanistan risked attack. Days later 19 Italians in Iraq were murdered—reportedly by Zarqawi’s network. In March 2003 Britain jailed an imam from Jamaica for nine years for urging followers to kill Hindus, Jews and Americans. After the Madrid bombings by a Moroccan sleeper cell influenced by a foreign imam, Spain is considering a law empowering authorities to monitor imams. But these efforts already have encountered opponents who brandish the banner of religious toleration. One of two imams expelled from France last month quickly won a court ruling allowing him to return.

Religious toleration is far too important to cede to the jihadis. John Stuart Mill wrote that the seminal battle for individual rights and democracy in the West was for religious toleration. That cause shaped the American foundation and creed and was the precursor to enlightenment and modernization in the West. As the Egyptian thinker Tarek Heggy reminds us, “the tolerant model” of Islam predominated into the twentieth century. Its renewal could revitalize and help to integrate Muslims in Europe.

More immediately, Europeans might listen to Zaki Badawi, the dean of the Muslim College of London. He says the answer to the plague of foreign imams, imported from backward regions and unfamiliar with European languages and cultures, is to educate second generation European Muslims to be imams. Divinity schools focused on fostering religious toleration could also offer useful and quality jobs for Europe’s Muslim immigrants and facilitate their entrance into society.

#### METHODS OF ATTACK

Attacks on the West have been carried out largely through two different types of terrorist operation: the sleeper cell and the hit squad. Sleeper cells are lodged in the immigrant community (such as the Brooklyn cells in the first World Trade Center bombing and the plot to bomb New York City landmarks, the Lyon cell in the 1994–96 attacks on French trains and the “Meliani” cell broken up across Europe in 2000–2001).

The sleeper cell poses a threat from the inside. Sleeper cells could develop from support networks staffed mainly by middle-class professionals and students who run Muslim charities, foundations, academic groups and non-government organizations and who are often linked to mainstream mosques funded by Saudi families. Alienated segments of Muslim immigrant communities such as the Lackawanna group constitute another possible source of sleeper cells. Assimilation has been shown to be a major factor in reducing support for violence among immigrant communities.<sup>6</sup>

Hit squads represent a threat from the outside. They deploy aliens, assembled overseas, who enter the country with a specific mission (the September 11 hijackers) and with legal or fraudulent visas. Hit squads also have been used to attack European and North African targets. The Madrid bombings, like 9/11, appear to have been a combination of a sleeper cell (based on Moroccan immigrants) and a hit squad led by Rabei Osman Sayed Ahmed, arrested in Milan, and Amer Azizi, a Moroccan and longtime associate of several suspects in the train attacks, who prior to the Madrid attacks was seen with Zarqawi in Iran.

This combination of terrorist methods means that our system of immigration safeguards cannot focus exclusively on foreign visitors or landed immigrants. From an operational immigration standpoint, sleeper cells and hit squads challenge opposite ends of the immigration system: landed immigrants (legal residents, refugees, citizens, children of immigrants) and visitors (on visas or illegal entry). Visitors must apply for visas and/or undergo checks at the port of entry (POE). Immigrants within the country may be monitored, but seldom are, by the Bureau of Immigration Control and Enforcement in the Department of Homeland Security (DHS). Resident immigrants and citizens may be monitored by the FBI if there is “reasonable indica-

<sup>6</sup>Forthcoming research in Ruud Koopmans, Paul Statham, Marco Giugni and Florence Passy, *Contested Citizenship: The Contentious Politics of Immigration and Ethnic Relations in Germany, Britain, France, the Netherlands, and Switzerland*, n.d. See also Paul Statham and Ruud Koopmans, “Multiculturalism and the Challenge of Muslim Group Demands in Britain, the Netherlands, and Germany,” in C. Husband and A. Garrido, eds. *Comparative European Research in Migration, Diversity and Identities*, (Spain: University of Duesto Press/Humanitarian Net), 2004; Paul Statham and Ruud Koopmans, “Multiculturalisme et Conflits Culturels: le défi posé par les revendications des groupes musulmans en Grande-Bretagne et aux Pays-Bas,” in Lionel Arnaud ed., *Les minorités ethniques et l’Union européenne. Politiques, mobilisations, identités*, (Rennes: Presses Universitaires de Rennes), 2004.

tion” of criminal activity.<sup>7</sup> Because we must deter both kinds of attacks, our entire immigration system is implicated.

Broadly speaking, the chief immigration tools for deterring hit squads are intelligence and exclusion: comprehensive and accessible watch lists, a visa process capable of scrutiny and discrimination, and ports of entry that employ a computerized entry-exit system based on accurate watch lists. But hit squads could strike at the most vulnerable area of our immigration system: the current Visa Waiver Program (see below). September 11 actually involved a sleeper cell within a hit squad—the infamous Hamburg cell. And of course that leadership cell was formed and developed in Europe. This is a trend likely to ripen in coming months and years. From interviews with federal law enforcement officials (especially FBI special agents), U.S. and European authorities on terrorism, and with journalists, a consensus emerges that another mass terrorist attack on the United States would most likely come from outside, probably by means of a hit squad. Another conclusion is that, should there be another terror attack on the United States, it stands a good chance of coming from Western Europe.

#### TARGETING AMERICA: THE WHITE MOORS

The leader of the resurgent networks, to the degree they have one, is thought to be Abu Musab al Zarqawi. He is the same terrorist whom Secretary of State Colin Powell claimed at the U.N. before the war linked al Qaeda to Saddam Hussein. Despite Colin Powell’s charge, Zarqawi is neither Osama’s man and still less was Saddam’s. Zarqawi’s alleged communication advocating a sectarian war in Iraq was intercepted in March. In December 2003 European police said Zarqawi groups were operating in Italy, Germany, France, Spain, Britain and Norway.

In France fighters are recruited for Chechnya while German groups link up with Balkan mafia gangs to procure weapons. Spain and Italy form transit routes from the Muslim Mediterranean and Italy’s document-forging industry makes the country a natural place to recruit and dispatch volunteers. Britain remains the nerve center and logistical hub—a safe-haven, a recruiting and staging ground as well as a factory for fraudulent documents. European jihadi activities extend as far as Bulgaria, the Czech Republic, Poland and Romania, prompting fears that the European battleground is spreading into an arena with weak public authorities, strong criminal gangs and widespread corruption.

In Western Europe al Qaeda has selected a region whose nationals can travel without the scrutiny trained on individuals from regions with a widely recognized al Qaeda presence. Local intelligence services say al Qaeda and company search for European recruits with clean records, especially women. Moreover, unlike previous generations of *jihadis* who invited police attention with their long beards, open proselytizing and orthodoxy, the new generation of “*takfiri*” holy warriors assume a Western life-style better to pursue jihad. *Takfir wal Hijra* (Anathema and Exile) is a radical Islamic doctrine developed in North Africa, the source of many of Europe’s Muslim immigrants.

Remember the two homegrown Brits who set off bombs for Hamas last spring? Scotland Yard estimates that there are more than sixty British suicide bombers on the loose today. Like the Tel Aviv bombers they are thought to be mainly second generation Muslim immigrants and converts. In London after 3–11, the chief of police declared a terrorist attack on Britain “inevitable.” Several days later his officers saved his prediction from hitting home when they uncovered a plot involving nine British nationals of Pakistani origin and half ton of explosives.

But al Qaeda the sequel is not confined to dusky immigrants. One indication that al Qaeda plans to strike US is their recruitment of European converts who resemble us and can enter the U.S. without so much an interview by a U.S. official. Our analysis of 279 suspected and convicted terrorists in North America and Europe since 1993 revealed 27, or 10% of the subjects, were converts to Islam. According to the Dutch AIVD (General Intelligence and Security Service) a “tendency has been established towards recruitment of converted Muslims and immigrant teenagers of Islamic origin”<sup>8</sup>

Bin Laden has called converts “an especially potent weapon,” and is tapping into the latest European fashion, what the French authority on Islamism Olivier Roy calls “protest conversions.” Young Europeans convert to Islam, Roy says, “to stick

<sup>7</sup> *Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations*, (Washington, D.C.: Department of Justice, Office of the Attorney General), 2002.

<sup>8</sup> AIVD, “Background of jihad recruits in the Netherlands, “March 10, 2004; [http://www.aivd.nl/actueel\\_publicaties/parlementaire/background\\_of\\_jihad](http://www.aivd.nl/actueel_publicaties/parlementaire/background_of_jihad)—accessed June 12, 2004)

it to their parents, to their principal . . . They convert in the same way people in the 1970s went to Bolivia or Vietnam [as part of] a very European tradition of identifying with a Third World cause." The deputy director of the French National Surveillance Directorate told me in April 2003 that "converts are our most critical work now." In Britain, before such advertising became illegal, Islamist websites boasted that "White Moors" were among al Qaeda's foreign legion fighting in Afghanistan and Chechnya. Three of nine Britons detained in Guantanamo Bay are former Roman Catholics who converted to Islam.

Many terrorists of Arab origin have European wives who often match them in ideological ferocity. Last month's suicide bombings in Uzbekistan were executed by women believed to be linked to al Qaeda. Female suicide bombers are *de rigueur* in Chechnya and have found their way to Moscow. A recent Milan police wiretap overheard the ringleader of the Madrid train bombings Rabei Osman Sayed Ahmed lamenting that a female operative involved in the Madrid project had been "discovered." But he added: "There are other women." Intelligence officers also say that al Qaeda has encouraged holy warriors to travel with their families to avoid suspicion.

We should make no mistake: the recruitment of women, converts, lily-whites and other Western faces is aimed at the United States. The Rabei Osman Sayed Ahmed was also overheard boasting that plans were under way for some sort of chemical attack against American interests. A woman who has already been "prepared with many medicinal products," he said. "If they toss a stick, they destroy an entire American neighborhood." One named Amal, he said, is "ready."

#### VISA WAIVERS

A pressing national security priority is to identify potential terrorists in Europe and deny them entry to America. The visa application process can play a role in this process. Before issuing a visa, U.S. consulates abroad often run background checks on visa applicants. These checks can take anywhere from two to ten weeks to complete. In an interview, a visa applicant presents his or her documents to a Foreign Service Officer (FSO) who has direct and immediate access to security databases which facilitate preliminary background checks. Running a name through a security database makes it easier to determine whether an applicant's profile merits subjecting him or her to a more thorough background check. However, most European travelers to America do not apply for a visa or submit to an interview at a US consulate thanks to the Visa Waiver Program (VWP).

If a citizen of a VWP member country is in possession of a machine-readable passport (MRP), he or she is not required to interview with an FSO (USA Patriot Act). However, if the mother or father of the applicant was born in a Middle Eastern or North African country believed to represent a significant national security threat to the United States, then the privilege of not being interviewed is withdrawn (regardless of the type of passport), and the applicant must present him or herself at the closest US consulate.

Given Al Qaeda's new recruiting priorities as discussed above, the policy of seeking terrorists along ethnic, religious, and familial lines may prove unsatisfactory and even illusory. Guarding against attacks from European Muslims requires both precise intelligence gathering and regular sharing of information—both among departments within the US government and with foreign allies. That will help us to identify convert or "lilywhite" jihadis before they board flights to the US.

As Richard Reid, the hapless "shoe-bomber" demonstrated, our Visa Waiver Program makes it child's play for British citizens to board a plane bound for the U.S. Cooperation with the Europeans is imperative if we are to continue our current Visa Waiver Program. Given jihadi recruitment among European nationals this constitutes an Achilles heel. U.S. intelligence sources say that European jihadi networks regard the Visa Waiver Program as "ripe for the picking." The Department of Homeland Security [DHS] stated in September 2003 that terrorist "operatives have been studying countries to determine which have the least stringent requirements for entry." It does not get much easier than procuring a European passport and boarding a flight to the U.S.

To counter this threat the U.S. proposed that airlines provide personal data on passengers within 15 minutes of departure to America, with fines of up to \$6,000 per passenger and the loss of landing rights for noncompliance. Several European countries oppose the measure, citing passenger privacy rights.

A short time before 3-11 the chief of a delegation from the European Commission told U.S. officials that the visa waiver problem would be solved by the US-Visit biometric entry-exit system, recently installed at major air and sea ports of entry. However, that same week the State Department disclosed that European countries

would miss an October deadline for coming up with the computer-coded passports needed for the system to work without a visa.

In any event neither of those measures would stop a terrorist from hijacking one of the more than 200 daily flights from Europe and diving it into an American city. Hence, the dispute over stationing armed marshals on these flights, which most European governments now support but Denmark, Italy and Portugal still oppose. But upon arrival an entry inspector has less than a minute to check a doubtful entrant in the new entry-exit system. Before granting a visa, a U.S. consulate abroad gets two weeks to run background checks. And it can require an interview. Testimony to the September 11th commission from the I.N.S. agent who stopped the would-be twentieth hijacker episode showed why an interview is essential.

To Jose Melendez-Perez, the veteran immigration inspector on duty at the Orlando International Airport on August 4th 2001, Mohamed al Qahtani's documents appeared to be in order. A check of his name, date of birth and passport number revealed nothing suspicious. But upon questioning it emerged that the Saudi had no hotel reservations, insufficient funds, no return airline ticket and would not name his return destination. He claimed someone was waiting to meet him at the airport, but reversed himself when the inspector asked who that was (we later learned it was Mohammed Atta, the ringleader of the 9/11 hijackers). Qahtani refused to give a sworn statement, which can provide legal grounds to refuse entry. "What came to my mind at this point was that this subject was a hit man," testified Melendez-Perez. The interview gave the inspector "the chills" and the twentieth hijacker was turned back. Similarly an interview by an alert customs inspector at the U.S.-Canadian border in Washington spotted a sweating Ahmed Ressam on his way to LAX and spared us the "Millennium bombing."

Should we then suspend the Visa Waiver Program in certain countries? This question seems to put homeland security at odds with foreign policy. The State Department is already strained to enforce more stringent visa scrutiny involving longer interviews and thus more staff time. Moreover there are comparatively low rates of visa abuse in European visa waiver countries. Reinstating visa requirements, in the absence of appropriations running into billions of dollars, would divert staff from countries with higher rates of visa abuse.<sup>9</sup> Moreover such a step would not only harm business and travel but further antagonize European publics. The Visa Waiver Program was designed to reward secure allies. Europe remains our ally but is no longer secure.

A quick fix would be to place unarmed DHS officers at check-in counters for U.S. bound flights from European airports. We already have Secret Service agents abroad and DHS officers at several overseas airports. A DHS presence is now deemed essential for the visa process in capitals like Abu Dhabi, Cairo, Casablanca, Jakarta, Islamabad and Riyadh (and Jeddah). What about Amsterdam, Brussels, London, Madrid, Paris and Rome? These officials would have access not only to

<sup>9</sup>We also must consider the effect of suspending the VWP on consular operations in Europe. During the summer of 2003, consular sections in major European cities strained to implement Washington's revised visa policies. Following USA Patriot Act legislation, those travelers to the United States who had benefited for years from the VWP were faced with a new choice: get a machine-readable passport (involving 3-6 weeks wait-time and costing 100 euros), or get a visa by interviewing with a US official at a consulate (2-10 weeks wait-time and 90 euros). Several VWP member countries had trouble adjusting to the new requirements, whether as a result of ineffective public information campaigns or insufficient reciprocal changes in passport issuance procedure. The result was a flood of visa applications at the major European consulates. In Paris, for example, FSOs in the consular section were required to interview twice the number of applicants in the same amount of time and with fewer FSOs on account of the war efforts in Iraq and Afghanistan. Consul Generals across Europe were instructed to communicate the increased importance of visa interviews to consular FSOs. Moreover, officials with Regional Security Offices (RSO), which are responsible for protecting State Department employees, found it difficult to maintain embassy and consulate security with 250 new foreign nationals waiting inside and outside the building for interviews.

Consular FSOs in Europe were told to interview more potential threats to national security in a shorter period of time in physical spaces that could not accommodate increased numbers of applicants. Suspending the VWP, even temporarily, will increase strain on over-stretched consular offices in Europe, thus decreasing national security. Suspending the VWP would result in another sharp increase in visa applications in Western Europe, and without likewise increasing State Department resources.

US consular operations in Europe must be considered a battleground in the war on terrorism. Terrorists will continue to take advantage of loopholes in US visa and immigration policy to infiltrate our homeland. Therefore, while the United States develops a program of premium visa processing and expands or moves its consulates to more secure areas, consular sections in Europe must be subsidized with support from DHS. In addition, more FSOs need to be stationed in consular sections in Europe. These are immediate steps that need to be taken in the war on terrorism.

watchlists from the new Terrorist Screening Centers but information from the National Targeting Center which can assimilate passport data and fire back alerts in real time. But for this system to work, to prevent terrorists from hi-jacking flights, passengers would have to complete check-ins on European bound flights at least an hour before wheels up. Passenger information would then be immediately transferred to DHS computers which would have an hour to identify suspicious passengers who could then be interviewed by an on the scene DHS officials or prohibited from boarding.

DHS offices in Europe could coordinate cooperation with European security, police and passport officials—introducing the safeguards of a visa to the passport process. That would take the concept of “smart borders” one step further. Today we place DHS agents in major sea ports (such as Rotterdam and Hong Kong). That extends perimeters outward making transit quicker, handling what we can away from the crowded border. It is a form of international cooperation which became routine after September 11 with Mexico and Canada. In addition DHS should re-examine criteria used in periodic reviews of visa waiver countries, taking into account local terrorist recruiting and passport issuance procedures. Finally, the U.S. government should work to convince European governments and airlines to transmit passenger information one hour before departure on international flights.

Currently the Advance Passenger Information Service (APIS) provides the Department of Homeland Security (DHS) with information on passengers on flights to the United States. The problem, however, is that DHS receives this information 15 minutes after planes take off. Passenger information must be transmitted at least one hour before take-off, allowing DHS officials to investigate passengers before they even board the flight. They would have time to run names through the National Targeting Center looking for travel to suspect countries and other warning signs through terrorist watch lists centralized in the Terrorist Screening Center. The procedure would benefit from the recently signed agreement between the United States and the European Union permitting the legal transfer to DHS of advanced passenger name record data (PNR) along with other passenger, cargo intelligence and threat information. The new procedure would only require airlines with service to the United States to require that passengers bound for America check in at least 60 minutes before boarding time.

These measures may help Western European politicians understand our concerns and encourage them to increase security cooperation. We must make access to the United States an incentive to security. That means mending—not ending—the visa waiver program.

European travelers and American businesses and universities have joined a chorus of complainants about long waits for visas. At the same time countries excluded from the Visa Waiver Program, such as Poland and Brazil, complain of undemocratic discrimination by the United States. Neither of the situations is viable over the long term.

The United States needs to explore a program of premium visa processing. Under such a program those institutions wishing to avoid the present long delays would pay a fee for premium service, allowing their visa to be processed speedily. The fee would be devoted not only to assuming the costs of such premium service but also to an accumulating fund applied to modernizing filing systems whose obsolescence now cause long delays. Besides paying a fee, the applicants would submit to a thorough background check. Eventually, as the fund accumulates and pays for modernization, we should institute an e-visa much like the current Australian system. Those willing to undergo extensive background checks would receive an e-visa with biometric features allowing multiple entrances into the United States.

#### THE GEOPOLITICAL STAKES

Over the long term the growth of European Muslim populations (nourished not only by proximity to the Middle East and immigration but also by high immigrant fertility rates) translates into political power. European politicians have learned to pay close attention to the wishes of the Arab world, and not just in Iraq. But the larger geopolitical question, raised as well by the Spanish repudiation of American Iraq policy, is whether U.S. intransigence, al Qaeda’s geopolitical strategy and Muslim influence will combine to lead Europe eventually to forge a neutral position in what al Qaeda certainly regards as a “clash of civilizations.”

If al Qaeda’s *golpe* has widened rather than narrowed the Atlantic divide, the blame falls on us just as much as on the Europeans. Our election and media-driven preoccupation with 9–11 eclipsed 3–11, even though the latter concerns al Qaeda’s future and the threat it holds for us today. Bush officials presented the Iraq conflict in a manner that alienated “old” European leaders and publics. To this day U.S.

officials persist, in the face of all expert opinion to the contrary, in dismissing the European view that al Qaeda had nothing but routine contacts with Saddam Hussein's regime and that pulling forces out of Afghanistan to invade Iraq would produce two fronts for holy war. Yet if we have shown the Europeans the back of our hand on Iraq, we have acquiesced in their showing us the back of their hand on 3-11, allowing them reflexively to treat 3-11 as if it were a European not a Western problem. Yet the obvious resemblance to 9-11 should have made 3-11 an occasion for drawing the North Atlantic more closely together. We should use upcoming NATO and US-EU summits to rectify this mistake.

We must become pro-active and visible in Europe, urging cooperation against al Qaeda. Yet the State Department has cut its budget for the U.S. public information campaign in Europe, the primary means the United States has to influence public opinion. That should be reversed. Moreover, top U.S. officials ought to be crossing the Atlantic to engage in Europe's post-3-11 conversation. They should invite European governments to fulfill standing agreements to bring together homeland security, interior, intelligence, law enforcement and justice officials to develop a complementary, if not a joint, response to the threat of European terror networks.

Given the threat from European terror networks, cooperation makes elementary national security sense. A rapprochement with Europe ideally would include Iraq, since we all can agree that al Qaeda will be the beneficiary of failure in that new terrorist front. Yet the wisest course would be to put to one side discussions over the wisdom of invading Iraq in 2003 and focus on the danger of European terror networks in 2004.

American politicians and statesmen cannot afford to get bogged down in the election year blame game over the last attack and need to get on about the one staring them in the face—an October surprise from Europe.

Mr. TANCREDO. Thank you, gentlemen. Dr. Krikorian, let me ask you a—well, first of all, you mentioned some numbers with regard to visa overstays, and I want to make sure that I understand it correctly.

Are you saying that  $\frac{1}{4}$  to  $\frac{1}{3}$  of the people who are here illegally came originally as visa holders and simply overstayed? I thought it was higher than that. I thought it was actually a majority.

Mr. KRIKORIAN. No, the estimates vary from a third to a half roughly. We don't know that it is a majority, but every time they look at it, they come up with a different estimate, and recent evidence suggests that maybe the previous estimates were low. So it might well be a majority.

But whatever it is, it is a very large proportion of the illegal population has overstayed one way or another.

Mr. TANCREDO. And also if we try to look at this program, the visa waiver program, in totality, and we try to look at it as part of the greater scheme of national security, can we afford to do so without actually also looking at then what happens on the rest of the border?

That is to say, that to the extent that we do tighten up whatever measures that we have in place for making sure that the people who come through ports of entry are who they say they are, and making sure that people who are the bad guys we are trying to keep out, to the extent that we are able to do that, and put pressure there, what happens along the rest of the border?

I mean, can we actually just think that this is the only way to address the problem? Is it not also disconcerting that the more pressure that we place on that, or not pressure, but the more secure that we become at the ports of entry, the more we simply push people to the side of the port of entry and allow them to come into this country illegally?

I mean, should we not be doing something or looking at this in totality?

Mr. KRIKORIAN. There is no question about it that immigration enforcement needs to be comprehensive, and across the board if it is going to work. Otherwise, we end up with the scene from the movie *Blazing Saddles*, where there was a toll booth in the middle of the desert, and people were lining up to go through it.

Well, that is not the way it works. Mr. Leiken suggested that al-Qaeda is already adapting and looking at using with different citizenships, using converts, using women or people with families, and that kind of thing.

So there isn't a way to just focus on one element of the immigration system, or one national origin group even, and looking just at young Arab males doesn't work if al-Qaeda adapts by using other young males.

So, yes, immigration enforcement, for it to work at all, needs to be comprehensive and across the board.

Mr. TANCREDO. Mr. Wolff, I can certainly understand your point of view, which I suppose is coming from the industry, but I must tell you that it seems somewhat shortsighted, and I can certainly imagine the response from the industry, the tourism industry, to an event, let us say, in Las Vegas, where a huge—you know, it is horrible to think about, but a huge event of some terrible nature would occur.

What would that do to the tourist industry of the United States? I mean, I can't imagine that tightening our security measures would have anywhere near the negative effect of a bomb going off at the MGM Grand, let's say, would have on our tourism economy.

That is a heck of a lot more frightening and should be to you it seems to me, than our efforts to try and make sure that the wrong people don't come into this country in the first place.

Mr. WOLFF. You are 100 percent correct, and I know that people are quick to say that as a member of industry that we are more interested in the business aspect of something and less interest in our civic and our ethical duties, but that is not the case particularly in this situation.

Our business acumen, and our ethic, and our civics, all line up. We want more security, and we think it is very, very important to increase security, that our industry is hit more than any other industry in America with the lack of security.

After 9/11 the market cap of my company decreased by \$2 billion. We lost hundreds of millions of dollars in sales. Several important things have happened. One quarter of the lost jobs in America after 9/11 come from my industry, and so we want security, and we want security first.

Of course, what trumps all of that in Marriott's case is during 9/11 we lost valuable associates while getting guests out of our World Trade Center Hotel, they lost their lives.

So this is not something where we are willing to trade economic benefits for security. We want security, and we are advocates of much stronger security. We just believe that like the General Accounting Office report, that doing away with the visa waiver program, the benefits on security would be unclear.

Everything that I have heard today makes me even more certain that it is unclear. To the degree that they are in recruiting what they call lilly whites and people that won't be caught in either an

interview or the normal visa process, all we have done is given somebody a small obstacle of having to go through a visa process instead of a visa waiver process.

And that is not going to discourage a determined terrorist, and even if we were to catch one or two through that process, it doesn't mean that we would stop the whole cell activity. So we see unclear benefits from doing away from this, and we see very, very clear economic loss to our entire Nation.

Mr. TANCREDO. Let me also ask you if in fact you are as concerned as you appear to be about the fact that we have a large number of people coming into this country illegally through the borders and byways other than through the ports of entry, and if so, is the industry prepared to support efforts in this Congress to actually begin to secure the border, including the use of military assets, if we need to use them in order to make sure that, in fact, just as you say, nothing happens that would imperil the health of the industry and also the country?

Mr. WOLFF. Yes. We are aligned with those people who want increased security, and we understand the complexity of this issue, and we understand the toll gate in the desert is a great metaphor.

I use the metaphor of a door, the front door on your house that has 3-inch steel and a huge bolt. But unfortunately you have glass windows and the back door is open.

And so people will come to us and offer us another 2 inches of steel on the front door, and the visa waiver, 100 percent interview process, et cetera, and do nothing to secure other ways of entry from the longest undefended border in the world.

Mr. TANCREDO. Agreed. Do you consider the possibility that your industry is actually encouraging the illegal immigration into this country because, of course, it is well known that that industry hires more people who are here illegally than perhaps any other?

Mr. WOLFF. It is not true that we are encouraging illegal entry into this country. We do not want to see that any more than any other American. And that we have vigorous rules and requirements in place to make sure that we don't hire, and the government is quite clear about what we can and can't do.

And so we do all that is possible to make sure that we do not hire illegal aliens, and we are not encouraging them in any way, shape, or form, and we do not want to facilitate that process.

Mr. TANCREDO. Well, that is very encouraging to hear, Mr. Wolff. The proof is in the pudding. Ms. McCollum.

Ms. MCCOLLUM. Thank you, gentlemen, for your testimony. It is interesting to me as I stated before in 1986, this was put in basically to speed up paperwork and reduce the number of employees that we had working on these issues.

Now, September 11 as you had talked about had tremendous impact on the tourism industry. So I truly believe that you want to see new business flourish and safeguards put in place at the same time.

My question to the panel is broader than just looking at these 26 countries that have been involved in it. Mr. Wolff, you represent an industry that is all around the world. Marriott has—

Mr. WOLFF. 70 countries.

Ms. MCCOLLUM. 70 countries? And you also have employees interested to discuss issues at the front desk with me, and many of the employees that you have here from some of your other 70 countries.

Knowing that we have to look at making these tourist visas work, and work in a way that allows the free flow of people to come and go within this country, but also works in a way that sets up safeguards, would any of your gentlemen have any comments about the way in which this Administration has put forward proposals to not only fund the programs, and man the programs, to allow this to happen, but look at our visa program in totality.

In other words, how do we assess the business client that comes here to stay at the Marriott, or the Hilton, or I have to say the Radisson being from Minnesota? How are we affecting that free flow and exchange, and the international tourist keep getting brought up time an time again.

But we have students, and we have industry leaders, and we have scientific panels that come. Don't we need to be looking at this totality, this system as a whole? I don't hear that we are doing this, and I would ask for hearings between the Education Committee, which meets across the hall, and this Committee, to talk about what is going on with student visas.

But maybe we need to be looking at commerce and business, and scientific guests in this country as well. Could any of you gentleman comment on that?

Mr. LEIKEN. I think we need to do to our border what Secretary Rumsfeld says he is doing to our military. We need to transform the border and bring it into the post-industrial age.

Ms. MCCOLLUM. Well, I don't know that I want to necessarily—

Mr. LEIKEN. You probably don't like the analogy.

Ms. MCCOLLUM. Yes.

Mr. LEIKEN. But I think we have to bring it into the information revolution, which we are starting to do with customs, and with free clearances, but I think the idea is to make the border quicker, but expand it.

So I think the way we could work with visas is we could have premium visa processing, where universities, companies, that want people to not have to wait in these long lines, and that harm their business, would pay for premium processing.

That fund would pay for the processing that it would be taken for that individual, but it would also contribute to an accumulating fund which would pay for the modernization of our files.

So that background checks could be much faster than they are now, and I think we ought to move toward a time where we have something like an E-Visa like they have in Australia, which in exchange for a thorough background check, you would get a multiple entry visa.

You would not have to pay for it once our system was modernized. So I think there are a number of things that we can do to look at it in a total way, and to basically modernize the whole process and not decrease, but increase, security in the process.

Mr. KRIKORIAN. Could I add also that I would second what Bob said, but there is something that has to pre-suppose that, and that

is a commitment to actually enforce the various requirements and standards that we are imposing on people.

And it simply does not exist now. Our government for a number of years now, over several Administrations, has simply stopped any meaningful enforcement of immigration law inside the United States.

And so we can come up with whatever time limits we think are advisable, and whatever other criteria for people that we are allowing into the country. But if those are not enforced, and if people who violate them are not punished somehow, they are irrelevant, and so what needs to be pre-supposed in any transformation of our visa system, or anything else, is a political commitment and a consensus that the immigration law is something that is going to be enforced rather than something that we kind of wink at and ignore.

Mr. WOLFF. I would agree with what has been said. I would share with you conversations that I have had with Asa Hutchinson on this subject, and he has said they are reviewing the visa situation top to bottom, and implementing changes where appropriate.

And citing a few examples which I find interesting, one of the important areas here is student visas, and for more than just the individual, but the geopolitical impact of the son of a prince who is going to come back, and I do some teaching at Georgetown and Wharton, and I have met some of these people.

And to deny these people entry into the United States is a huge mistake in terms of our long term security and our influence on the world. And they are working on ways that like any student, for example, and they don't always do their paperwork on time, et cetera, my son included.

And so when they show up at the border, they are working on systems that directly connect to the universities that say, Mr. Wolff, you say you are enrolled at Harvard, yes, they are, and they can check pictures, et cetera.

So they are doing things to enhance the system, and you are absolutely right. We do need top to bottom, and not just the visa process, but border security as part of that.

Ms. MCCOLLUM. Mr. Tancredo, I think it would be helpful for this Committee not only to hold a joint hearing as I have into both the Ranking Members and Chairmen of both Committees, but we need to find out if the dollars are being spent not only to do the enforcement.

I mean, we have accumulated all this paperwork for years to seek visas, and colleges, and universities, nobody has even looked at it, checked it, and now we have put more obstacles in place, but are they really giving us the results that we want.

Are we seeing students and scientific conferences being held in other countries, losing dollars, and as you put it, geopolitical good will in our will, at the benefit of some of our good friends?

And Australia in particular has seen their ability to have tourists, and scientific conventions, and students increase as we are seeing it decrease here in this country. Thank you.

Mr. TANCREDO. Thank you, Ms. McCollum. Mr. Sherman, do you have a question?

Mr. SHERMAN. Oh, a few, and in fact I have got more than we have time for, and so I am going to ask that for most of them that

you place the answers in the record. The first is one that Mr. Wolff has already answered.

But I promised my good friend, Shelly Berkley that I would ask you, and then you can respond for the record, whether the travel industry cares only about visitors spending and getting people into the country, and is opposed to policies that would improve homeland security.

One needs only to look at the effect on your industry of September 11, not only plus the patriotism of the people in your industry to know the answer to that question, but I have got to move on.

It is unfortunate that my friend, Dana Rohrabacher also is not here. We were talking about accensure and me referring to them as a Benedict Arnold corporation, and he thought that was unfair.

He mentioned first that by incorporating in Bermuda that they escape United States regulation, and that is completely false. They do so exclusively to avoid U.S. taxation. And so their view is that they should not put money into the U.S. Treasury, but they should get \$10 billion out of the U.S. Treasury.

And so indeed it may be unfair to refer to them as a Benedict Arnold Corporation, because after all once Benedict Arnold betrayed our country, he stopped drawing a salary, and it might be unfair to the memory of Benedict Arnold to refer to these tax expatriots as Benedict Arnold Corporations.

Maybe Mr. Rohrabacher has a point. I should point out that all of the hijackers on September 11 got visas, and not visa waivers. So we have a problem whether we are waiving the visas or granting the visas.

The whole idea of the visa waiver program biometric, whatever, is based on the idea that not only can we get an accurate identity of the human being coming into our country, but that we can check it against a list of bad guys, and as you point out, bad women, we don't want into our country.

I will ask you to comment for the record, especially because you don't have classified information, do we even have a list. What is the good of biometric—looking at the eyeball structure of somebody coming into our country if—and the way to put this is what percentage of the terrorists and terrorists in training are on our—well, is it using our best guess as to the people that we have on the list.

Also keep in mind that we tend to put a name on the list like, you know, Jack Jones, or Carlos Rodriguez. Well, there are lots of people with those names, and so the idea that we have a list that would be of any use is something that I would like for you to explore in your written responses.

As you point out, we have no internal enforcement of our immigration laws. This is because we as policy makers are unwilling to reach a real decision as to what we want the immigration policy to be.

So we have one thing in the statute books, and another thing that is the real policy. We have one set of limits in our statute books, and a coalition of forces that wish to see more open immigration mandate a different approach to enforcement.

Which is that if we don't catch you at the border, you are free to stay here and work here, subject to just enough inconvenience

and oppression for second-class non-citizenship. So that they can keep wages down and can't organize.

So this tacit bizarre coalition of groups that want unlimited immigration, or very few limits on immigration on the one hand, is matched with a don't touch it policy here in Congress. So we have a disconnect.

We have a situation where we have one policy, and our statutes say we have another policy, and so we have no policy. I am flabbergasted.

Mr. TANCREDO. Do you have a question?

Mr. SHERMAN. Yes, I do have a question or two, but Mr. Wolff, I am sure that your industry will be getting a lot more foreign visitors once our trade policies or failed trade policies, and failed budget policies here in Washington ensure a crash of the dollar.

I hope that you are preparing for the one Euro buys you two dollars future that we are likely to see, and we will see a lot more foreign currency here. I hope that our State Department is prepared to process.

I do want to comment on the fact that you testified to us that the U.K. and Japan is able to meet the technical standards that our own State Department can't meet. Is that correct, Mr. Wolff?

Mr. WOLFF. I believe the words were are on track to meet the deadline.

Mr. SHERMAN. On track. They are on track for October of this year, right?

Mr. WOLFF. No, no, October of next year.

Mr. SHERMAN. October of next year, but our State Department wants October of the year after that.

Mr. WOLFF. Yes.

Mr. SHERMAN. So the U.K. and Japan are 1 year better because they are more dedicated to securing the lives of Americans apparently than our own government, or they are just more efficient.

Mr. WOLFF. I think it is a reporting issue. I think that there is a lot of technology involved, and when you say we are on track to do that, how many large projects have people been involved with that they are on track the year before, but is not implemented on time.

Mr. SHERMAN. Okay. There at least even with—and it appears to be the head of our own State Department in implementing this, getting to how our own pilot program is working, it is my understanding that in Baltimore you just swipe a card, but nobody is watching you swipe the card.

That it is easier to walk through without swiping your card than it is to sneak on to the Washington Metro without putting in your pass card. Which one of you would like to comment on whether the Baltimore pilot system has any reasonable security?

Mr. KRIKORIAN. Well, I can't comment specifically on whether the BWI Program itself is the be all and end all, but the whole concept of exit control is what is lacking. In other words, this is their first try at exit control, because Mr. Jacksta was saying that for all along we had a way of knowing who left—

Mr. SHERMAN. Keep in mind, and let us say you have a Jack Smith, and he is here, and he is supposed to leave in 90 days, and he does in fact, and he doesn't swipe his card. Now we are devoting

our nonexistent internal resources to try to find Jack Smith, who has overstayed his visa.

It is my understanding, and if you are not familiar with Baltimore, that is fine, that our system of making sure that the card is swiped as Jack Smith leaves the country is less secure than whether I sneak on to the Washington metro.

Mr. KRIKORIAN. I have no doubt that that is the case, but it is a very modest baby step improvement over the paper system, where the stewardess collected the other half of the I-94 Form, and handed them to the airlines, and the airlines gave them to immigration.

And immigration gave them to the contractors and which sent it to the minimum wage employees in Kentucky, who types them in with two fingers. So in a sense they have to start somewhere, and they should have started 15 years ago, but I am loathe to criticize them for taking the first baby steps.

Mr. SHERMAN. You are right. We are doing so bad now that the pitiful efforts that they are experimenting with look good by comparison. I do want to move on.

Mr. TANCREDO. We are way beyond our time. Go ahead. One more question, please.

Mr. SHERMAN. Mr. Leiken, can you comment on how our European friends are likely to react—and I now that Japan would accept this—if we dealt with their citizens differently based upon their nation of birth?

Mr. LEIKEN. I think they would react poorly to that, but I also don't think it is a very wise measure because again there is always recruitment of converts going on. So I think we might be kidding ourselves. Could I react to what you said earlier about watch lists though?

Mr. SHERMAN. With the Chairman's indulgence.

Mr. TANCREDO. Go ahead. Sure.

Mr. LEIKEN. I think the watch list is an important tool. We develop watch lists on the basis of people that we have captured and what they have said, and on documents that we capture, and on infiltration, by foreign intelligence services, on intercepts.

I think that it is important to keep those up to date and it is a job that the intelligence community to do that. I think that what that tells us is that immigration and national security have to be integrated.

It is not just a matter of integrating immigration. It is a matter of integrating—

Mr. SHERMAN. I could not agree with you more, but the question was what is your best guess as to what percentage of the terrorists and terrorists in training are actually on the list that we use?

Mr. LEIKEN. I don't know that anybody has a guess on that.

Mr. SHERMAN. All we have is a guess, but my guess is very low.

Mr. LEIKEN. Right.

Mr. TANCREDO. All right. Gentlemen, thank you all very much for joining us today. You have lots of homework as a result of the many questions asked of you, and I think my colleagues will be providing questions and asking you to respond to them in writing. But anyway, thank you very much for your testimony, and this meeting is adjourned.

[Whereupon, at 12:03 p.m., the Subcommittee meeting was adjourned.]



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*FAIR is a nonprofit public interest organization working to end illegal immigration and to set levels of legal immigration that are consistent with the national interest.*

### FEDERATION FOR AMERICAN IMMIGRATION REFORM

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June 14, 2004

Hon. Henry J. Hyde  
Chairman, International Relations Committee  
2170 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

*Please accept this as a submission for the written record of the June 16<sup>th</sup> hearing on The Visa Waiver Program and the Screening of Potential Terrorists.*

The Federation for American Immigration Reform has long been concerned that the Visa Waiver Program (VWP) endangers U.S. national security. The VWP was instituted at a time when the threat of international terrorism did not loom as ominous as it does today. It was intended to expedite travel to our country for people who were a low risk of becoming illegal aliens. Today, in the post-9/11 world, there are additional concerns that must be considered.

In this day and age, we would not consider allowing anyone – including our own citizens and VWP passport holders – to board an airplane without thoroughly screening them. It, therefore, makes no sense to let them off the plane, and into our country, without some sort of screening process. There can be little doubt that if the VWP did not exist, and all travelers except for the special provisions for Canadians and Mexicans were required to present visas, that the processes to identify and keep out potential terrorists and intending illegal aliens would be enhanced.

Our own intelligence and law enforcement agencies acknowledge that there are large numbers of Islamic fundamentalists and persons with identified connections to al-Qaeda and other international terrorist organizations who reside in European countries that participate in the VWP. As Dr. Stephen M. Steinlight wrote in an April 2004 publication of the Center for Immigration Studies, "Virtually every major city in Western Europe has a central mosque, funded by the Saudis, that preaches extremist Wahabbi doctrine. These mosques, that have spawned the likes of Zacharias Moussaoui and Richard Reid, are recruiting centers and financial support networks for Muslim terrorist cells." Many extremists are citizens of those countries. In addition, others connected to terrorism who reside in those countries have access to stolen or altered passports of those countries.

The terrorist organizations themselves have recognized the visa waiver program as a chink in America's defenses against their infiltration of our

country. In his March 2004 book, "Bearers of Global Jihad?: Immigration and National Security After 9/11," published by the Nixon Center, Dr. Robert S. Leiken, whose testimony you will also receive, notes that, "al-Qaeda strives to recruit individuals with access to Western passports. Since September 11, jihadists have rebuilt and even extended their European operations." With large, and often radicalized, Islamic populations in many VWP countries, the failure to pre-screen citizens of any country poses a significant risk to homeland security.

The issues which must be balanced in considering whether the VWP should be abolished involve the amount of threat resulting from the existence of the program and the amount of increased security that would result from its abolishment. The ease with which terrorists may be able to enter the country at ports of entry is obviously of paramount importance, but one should not overlook the extent to which illegal residence in the United States is also facilitated by the program. The latter is relevant because the cumulative size of the illegal alien population, now estimated at 9 to 11 million persons, with about one-third of them estimated to be persons who entered legally and then stayed on illegally, provides camouflage for the operation of terrorists who are in the country.

In assessing the national security threat represented by travelers from VWP countries it is relevant to keep in mind the following:

- the Moussaoui and Reid cases, noted above, both of whom were terrorists, traveled to the U.S. respectively on a French and United Kingdom passport,
- the emergence in European VWP countries of a breeding ground for Islamic fundamentalists, noted above,
- the role of Germany, a VWP participant, as a planning center for the September 11 terrorist attacks, and
- the fact that some of the members in the September 11 terrorist conspiracy were unable to participate in the attacks because they were denied visas.

It can be argued that, because all of the 19 September 11 terrorists received visas, the consular screening process for visa issuance is irrelevant to national security. That argument ignores both the fact that the consular screening succeeded in denying entry to some of the participants, and the fact that consular visa screening, backed up by Department of Homeland Security screening, is much more rigorous today than before September 11.

A visa interview conducted by a person who is familiar with the language, customs and documents of the visa applicant's country will always offer a greater opportunity to identify and deny a visa to a person who is not a bona fide visitor to the United States. Although there are major pressures on the visa-issuing consuls abroad, these are not as great as the pressures on the immigration and customs authorities at U.S. ports of entry. Therefore, when there is consular screening, not only is there a secondary check on the bona fides of an intending traveler and the legitimacy of the passport, it is a check that is better informed and not as compromised by the time pressures to avoid bottlenecks at the U.S. port of entry.

Elimination of the VWP will admittedly have its costs, both monetary and the added inconvenience that will be imposed on legitimate travelers. The U.S. tourism industry argues that these costs may be harmful to their interests. As we have learned from the bitter lessons of

9/11, the price of failing to take necessary precautions is significantly higher. The loss of lives, the destruction of property and the reluctance of people to travel out of fear outweigh any additional costs and inconvenience that might rise as a result of elimination of the VWP. People have accepted the costs and inconveniences associated with modern travel, and there is every reason to believe that travelers from those countries affected will understand and accept the need to secure a visa before coming to the United States.

American businesses that depend on tourism and travel argue that national security depends on intelligence information rather than consular screening. We certainly concur. But enhanced intelligence does not negate the critical supporting role of consular screening of visa applicants in using intelligence information to screen out terrorists, in identifying falsified passports, and in applying in-country expertise to screen out persons ineligible for visas.

The concern of the travel industry that elimination of the VWP would lead to a major decrease in tourism to the U.S. and jeopardize this lucrative industry which employs many people in this country is also misplaced. The industry ignores the fact that foreign travelers to the United States do not have to obtain a U.S. visa every time they travel to the United States. Before the VWP was started, and in countries that do not now participate in the program, persons intending to travel to the United States apply for a visa at a U.S. consulate only if they did not already have one.

Visas are issued for varying periods of validity and varying numbers of entry into the United States, depending on reciprocity, country-by-country experience with visa abuse, and the judgment of the consular officer. Prior to creation of the VWP, in countries that now participate in the program, such as the United Kingdom, most citizens received visas that were indefinitely valid. In other words, a U.K. visitor to the United States would have to apply in person only once in order to be able to visit the United States over a lifetime. If we return to this system in which all visitors have to make at least one in-person application for a visa, it would have no effect on travelers who already have visas.

There would be a transitional need for persons who have never obtained a U.S. visa to apply for one, but, after that transition, only persons who are first-time visitors to the United States would have to apply. These are exactly the persons who need to be interviewed and have their travel document scrutinized by a consular officer to determine that they are bona fide visitors.

The VWP relies on an assumption that nationals of the countries that participate in the program represent a negligible threat of becoming illegal aliens in our country. Yet, there is currently no basis for that assumption. It is only in comparison to the illegal alien population from other countries that are not participants in the program, Mexico especially, that the incidence of illegal immigration from VWP countries pale by comparison.

The 1986 IRCA amnesty demonstrated that nationals of the VWP also become illegal residents of our country. Nearly all, if not all, of the current 27 VWP countries had nationals who applied for the amnesty. According to the *Report on the Legalized Alien Population* issued in March 1992, which included data on about half of the amnesty applicants, five of the VWP participating

countries had more than 1,000 amnesty applicants, with the United Kingdom at the top of the list with 6,686 applicants.

It is impossible to determine the number of illegal immigrants from VWP countries since the 1986 amnesty, but immigration data reveal that in 2002 over 70 percent of the newly admitted immigrants from VWP countries were already residing in the United States. This compares with less than 64 percent of the new immigrants from non-VWP countries who similarly were already residing in the United States.

There is one final argument against terminating the VWP. As noted above, visa practices are often based on reciprocity. If we were to end our program, U.S. travelers could find their ability to travel to those 27 countries without obtaining visas similarly ended. This would represent an inconvenience for U.S. travelers. However, today reciprocity plays a much smaller role in visa policies than do tourism considerations. Many countries do not require visas of U.S. visitors even though we require them of their nationals. This suggests the possibility that inconvenience to U.S. travelers as a result of a termination of the VWP could be minimal.

In summary, we find the arguments for continuing the VWP not compelling, and the national security and exclusion of intending illegal alien reasons for terminating the program persuasive. The threat to our homeland from international terrorism now and for the foreseeable future is so great that we can ill afford to perpetuate loopholes in our security system like the VWP.

Respectfully,



Dan Stein  
Executive Director



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June 16, 2004

The Honorable Elton Gallegly  
 Chairman of the House of Representatives Subcommittee on International Terrorism, Nonproliferation  
 and Human Rights  
 253 Ford House Office Building  
 Washington, D.C. 20515

Dear Mr. Chairman,

The National Business Travel Association (NBTA), representing over 1,500 corporate travel managers for the Fortune 1000 companies, and over 8 million international business travelers, applauds the House of Representatives for passing H.R. 4417, which extends the October 26, 2004 biometric passport deadline for Visa Waiver Program (VWP) countries by one year.

Prior to September 11<sup>th</sup>, 2001, international travelers were becoming an integral part of our economy. Even today, multinational corporations like Honda Motor Company, Hewlett-Packard, and Amgen provide consistent services and support between the United States and their offices around the globe. While the national security "hassle factor" seems to be decreasing and the U.S. economy seems headed for a rebound, there are still remnants of the fallout of September 11<sup>th</sup> that are threatening the resumption of international travel and the restoration of a solid economy.

According to the Department of Commerce, twenty-eight percent of all international visitors come to the United States for business. The same survey shows that international business visitors spend an average of over \$1,700 per person on each visit. However, due to the nature of the business world, business travelers finalize their plans for international travel closer to the departure date than leisure travelers. In 2002, on average, international business travelers coming to the United States made their airline reservations less than 20 days before their departure date. The current uncertainty around the VWP has already caused the delay of many business trips planned for the late fall and winter and has hampered bids by United States organizations to hold international conferences. Clearly, requiring travelers from VWP countries to begin applying for visas before traveling to the United States would cost American businesses across the country hundreds of millions of dollars.

While travel continues its rebound from the post-September 11 fallout, a barrier to travel, and especially business travel and international commerce, would only serve to slow the current recovery. International business travel helps facilitate trade of goods and services from all over the United States to every corner of the globe. We must ensure that the lanes of business travel with our most important trading partners and allies remain free and clear. Therefore, we urge the Senate to pass H.R. 4417 and extend the October 26, 2004 biometric passport deadline for Visa Waiver Program countries as soon as possible.

If you would like to discuss this issue further, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Bill Connors".

Bill Connors  
 Executive Director and COO

